

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
v.)
)
) No. S1-4:12-CR-97 ERW
ALIREZA BAKHTIARI,)
)
Defendant.)

SENTENCING HEARING

BEFORE THE HONORABLE E. RICHARD WEBBER
UNITED STATES DISTRICT JUDGE

NOVEMBER 19, 2012

APPEARANCES:

For Plaintiff: Dean J. Sauer, Esq.
 OFFICE OF THE U.S. ATTORNEY
 111 South 10th Street, 20th Floor
 St. Louis, MO 63102

For Defendant: Alireza Bakhtiari, Pro Se
 3889 Walsh St.
 St. Louis, MO 63116

Andrea L. Smith, Esq.
715 W. Rosehill
Kirkwood, MO 63122

Reported By: SHANNON L. WHITE, RMR, CRR, CSR, CCR
 Official Court Reporter
 United States District Court
 111 South Tenth Street, Third Floor
 St. Louis, MO 63102
 (314) 244-7966

PRODUCED BY COURT REPORTER COMPUTER-AIDED TRANSCRIPTION

INDEX

WITNESSES

| | |
|---|-----|
| <u>BRADLEY S. HILES</u> | |
| Direct Examination by Mr. Sauer | 14 |
| Cross-Examination by Mr. Bakhtiari | 33 |
| <u>MARSHALL HOEKEL</u> | |
| Direct Examination by Mr. Bakhtiari | 64 |
| <u>GLENNON FOGARTY</u> | |
| Direct Examination by Mr. Sauer | 75 |
| Cross-Examination by Mr. Bakhtiari | 82 |
| Redirect Examination by Mr. Sauer | 88 |
| Recross-Examination by Mr. Bakhtiari | 90 |
| <u>SHARON L. WEISS</u> | |
| Direct Examination by Mr. Bakhtiari | 94 |
| Cross-Examination by Mr. Sauer | 100 |
| <u>MICHAEL GREGORY SALAZAR</u> | |
| Direct Examination by Mr. Bakhtiari | 102 |
| Cross-Examination by Mr. Sauer | 109 |
| Redirect Examination by Mr. Bakhtiari | 112 |

(PROCEEDINGS STARTED AT 9:05 AM.)

(THE FOLLOWING PROCEEDINGS WERE HELD IN OPEN COURT AND WITH
THE DEFENDANT PRESENT:)

4 THE COURT: Calling the following case: *United
5 States of America v. Alireza Bakhtiari*. Case number is
6 S1-4:12-CR-00097 ERW.

7 || Is the United States ready?

8 MR. SAUER: Yes, Your Honor.

9 THE COURT: Is defendant ready?

10 MS. SMITH: Yes, Your Honor. I do have a
11 preliminary --

12 THE COURT: All right. I'll hear it now.

13 MS. SMITH: First of all, Your Honor, I apologize for
14 everybody being late. There's more -- there's enhanced
15 security in the courtroom -- I mean in the building.

16 THE COURT: No. That's all right.

17 MS. SMITH: So I apologize for running a little bit
18 late.

19 Your Honor, I do make a motion to withdraw counsel at
20 this time and request that I be appointed stand-by counsel.
21 My client and I have come to an impasse on a number of
22 matters, and this case is factually complex, and Mr. Bakhtiari
23 actually has a better handle on the facts than I do.

24 I think Mr. Sauer -- I hope Mr. Sauer does not oppose
25 my motion. I did notify him last night and sent him an email

1 saying that I was going to be doing this, as I did the Court
2 this morning, before court started. So I make the motion to
3 withdraw as counsel of record and request that I be appointed
4 as stand-by counsel, Your Honor.

5 THE COURT: Let me hear from Mr. Bakhtiari. Go
6 ahead, sir.

7 MR. BAKHTIARI: Yes, Your Honor. If I may also, I
8 assert the same motion as pro se. Earlier in the proceedings,
9 the Honorable Adelman allowed me to act as cocounsel in pro
10 se. Now, in this juncture in these proceedings, number one,
11 because of the complexity of the facts that are behind it --

12 THE COURT: Okay. Now, you just hit upon a -- if
13 there are complex facts, you need a lawyer. What makes you
14 think just because the facts are complex, you're more capable
15 of protecting your rights than a lawyer is?

16 MR. BAKHTIARI: It's more extensiveness than complex,
17 Your Honor. If I may correct my statement, it's extensive.
18 It goes several years back. There are three underlying civil
19 suits. And it's been very voluminous as far as addressing the
20 evidentiary matters of factual issues. On that basis, if I
21 may, Your Honor, I move the Court to allow me to proceed in
22 pro se in sentencing.

23 I have submitted a sentencing brief to the Court, and
24 I'll have exhibited to the Court that I have familiarized
25 myself to the fullest extent with the sentencing terms and

1 also the calculation of the guidelines.

2 Having said so, Ms. Smith will not be leaving the
3 courtroom, and I will definitely utilize her existence and her
4 services if need be, but it would -- it would serve the
5 justice, Your Honor, to the best if I proceed by addressing
6 these factual and legal matters merely because it's highly
7 extensive, it goes back three years, maybe more, and we are
8 talking about three other heavily litigated civil suits that
9 have given rise to the current criminal case before the Court,
10 Your Honor.

11 THE COURT: Well, my concern is that you're just
12 disillusioned maybe about these proceedings or, you know, any
13 time you have complex matters, you're always better off with a
14 lawyer. Any time you have basically similar simple matters in
15 court, you're always better served by having an attorney. We
16 are not going to have mini trials today about three prior
17 cases. Do you understand that?

18 MR. BAKHTIARI: That is actually one of my requests
19 before this Court, to allow the civil suits to be tried based
20 on their own merits in their own court. And within the briefs
21 that Mr. Sauer has submitted, he has tried to address the
22 merits of the civil court suits in this court. That is
23 actually one of my main points, to keep those out of this
24 court and address the law of the Eighth Circuit especially
25 enunciated in the Fox -- in the case of United States v. Fox

1 back in 1975, which says --

2 THE COURT: Wait. I don't want to get into that
3 right now. The sentencing guidelines are extraordinarily
4 complex.

5 MR. BAKHTIARI: Yes.

6 THE COURT: Even the most highly trained lawyers have
7 difficulty negotiating the United States Sentencing
8 Guidelines. Experience that I have teaches me that every time
9 someone represents or tries to represent themselves, the
10 following happens: They find it very awkward to proceed in
11 asking themselves questions on the stand and answering the
12 questions. If I allow narrative testimony, it frequently is
13 interrupted. If you are unsuccessful today in your
14 representation of yourself, it always results in extensive
15 hearings later because you will claim you didn't have
16 effective assistance of counsel. If you are unsuccessful,
17 then on appeal you may be forfeiting some of your rights. If
18 you say things in court, it can be used against you as an
19 admission, where it would not be with your lawyer.

20 Everything I know, over thirty years of doing this,
21 suggests that anyone who represents themselves set themselves
22 up for failure, disappointment, disillusionment. They leave
23 the court thinking they were being treated unfairly because
24 the judge was unfair with them. I am here to give two people
25 a fair trial, the United States of America and you. I don't

1 take sides. I don't help you. I'm not going to get involved
2 in representing you today. All of those things mitigate
3 against doing what you want to do.

4 Now, having said that, you do have certain
5 constitutional rights that permit you to do that. I think
6 it's a mistake, I think you're making a big error, and I want
7 to make sure you understand all of those things before I rule
8 on your motion.

9 MR. BAKHTIARI: Your Honor, I am fully aware of the
10 perils and the pitfalls of self-representation. Throughout
11 years I've come to the absolute faith through that old saying
12 that an attorney who represents himself has a fool for a
13 client. A pro se who represents himself, a layman pro se who
14 represents himself, has a double fool for a client. I'm fully
15 aware of that.

16 But having to choose between the lesser of the two
17 evils, I think it would serve me the best if I proceed in pro
18 se, and on the record I acknowledge that I fully am aware of
19 the perils and the downfalls of self-representation. And I do
20 not intend to take this stand as a fact witness in this case.
21 It is my constitutional right to avoid that, and I do assert
22 that right, Your Honor.

23 And, well, I'm sure that any time I start making
24 narrative statements or to the witnesses posing statements
25 rather than questions, Mr. Sauer will dutifully object.

1 THE COURT: All right. Now, as I understand your
2 request, it isn't that Ms. Smith be terminated in representing
3 you. It's she'll remain here in the courtroom to be available
4 to you if you request her assistance. Is that what you're
5 asking?

6 MR. BAKHTIARI: If she wishes to stay, I would
7 welcome her assistance at times, yes, Your Honor.

8 THE COURT: Are you willing to proceed on --

9 MS. SMITH: Of course, Your Honor, yes.

10 THE COURT: Very well. Well, I will permit you to
11 represent yourself. You are now a pro se litigant in this
12 case. You are responsible for proceeding with your case and
13 following all the rules of evidence, all the rules of criminal
14 procedure, and Ms. Smith will be here solely for the purpose
15 of helping you if you ask her a question.

16 Very well. You may have a seat.

17 MR. BAKHTIARI: Thank you, Your Honor.

18 THE COURT: And I will explain the general nature of
19 the proceedings today as to how I expect to proceed. First,
20 have you received and reviewed a copy of the presentence
21 report in this case, Mr. Sauer?

22 MR. SAUER: Yes, Your Honor.

23 THE COURT: I know that you have, Mr. Bakhtiari,
24 because you have filed a sentencing memorandum, so you have
25 received a copy of the sentencing guide -- of the presentence

1 report; is that correct?

2 MR. BAKHTIARI: Yes, Your Honor.

3 THE COURT: And I note there are objections, which I
4 will be taking up soon. First I shall be making calculations
5 under the United States Sentencing Guidelines. The objections
6 that are on file relate to those calculations. The United
7 States Sentencing Guidelines were passed in 1984 but became
8 advisory on January 12, 2005, when the United States Supreme
9 Court said that they were, in part, unconstitutional.

10 I shall make calculations under the guidelines as I'm
11 obligated to do, but I will consider them only in an advisory
12 manner. I will consider the impact of the parties' plea
13 agreement on any sentencing issues. I will hear evidence that
14 the United States or the defendant will present. I will hear
15 statements of counsel and of the defendant if he cares to
16 speak. I will decide whether there should be any departure
17 under the guidelines. I will look at all the factors under
18 18, United States Code, 3553(a) to decide whether to impose a
19 guideline sentence or a nonguideline sentence.

20 Those factors include the nature and circumstances of
21 the offense and history and characteristics of the defendant,
22 the need for the sentence imposed to reflect the seriousness
23 of the offense, to promote respect for the law, and to provide
24 just punishment for the offense, to afford adequate deterrence
25 to criminal conduct. I'll protect the public from further

1 crimes the defendant might commit.

2 I will consider the need to provide defendant with
3 needed educational, vocational training, medical care, or
4 other correctional treatment in the most effective manner,
5 recognizing now that he has a master's degree.

6 I shall now turn to a general review of the
7 sentencing guidelines. I'm not going to be making final
8 conclusions at this time until after I consider the
9 objections, but by making reference at this time, I think it
10 will help frame some of the disputes in the case.

11 The 2012 version of the manual was used to determine
12 defendant's offense level under United States Sentencing
13 Guideline 1B1.11. The guidelines for violation of 18, United
14 States Code, 1512(c)(2) is found in 2J1.2(a) of the manual.
15 The base offense level is 14.

16 The parties agreed at the time of the plea to
17 disagree as to whether eight levels would be added under
18 United States Sentencing Guideline 2J1.2(b)(1)(B) because the
19 offense involved a threat to cause physical injury to a person
20 in order to obstruct the administration of justice. So I will
21 not impose that eight level at this time until after I hear
22 the objections.

23 There is also an objection as to whether two levels
24 will be added. The challenged guideline is 2J1.2(b)(3)(C)
25 regarding whether the offense was extensive in scope,

1 planning, and preparation.

2 There is also a challenge to the obstruction of
3 justice, additional two points recommended in the presentence
4 report under 2C1.1. It is charged that it is in the report
5 that defendant willfully obstructed or impeded or attempted to
6 obstruct or impede the administration of justice, and if
7 allowed, that would be a two-point addition.

8 So there is an eight-point challenge under
9 2J1.2(b)(1)(B). There is a two-point challenge by the
10 defendant under 2J1.2(b)(3)(C). There is a two-point
11 challenge under United States Sentencing Guideline 3C1.1.

12 And at this time I will hear from the defendant on
13 his challenges as outlined. Whenever you're ready. Go ahead.
14 We will take up the eight-level challenge first.

15 MR. BAKHTIARI: Yes, Your Honor. Your Honor, under
16 Section 2J1.2(b)(1)(B), the United States has asked for an
17 eight-level enhancement to the offense level based on two
18 underlying facts: That on January 15, through an unknown
19 route, with some unknown means, an unknown person has sent an
20 email to Mr. Hiles threatening the well-being of his family;
21 and furthermore, throughout a civil discovery, a rifle has
22 been produced at his request to Mr. Hiles' colleagues.

23 The Government maintains that this establishes posing
24 physical threat to the well-being of these individuals in
25 order to obstruct justice.

1 The elements of this enhancement is essentially the
2 same as the indictment that was dismissed. Earlier through
3 these proceedings the Government conceded that they could not
4 assert and fulfill the elements of 18, U.S.C., 1875 Section C,
5 which is communicating the threat via internet. They
6 voluntarily withdrew that cause, and they dismissed that
7 indictment.

8 Now, Mr. Sauer is back with a request to reimpose
9 that cause through a different channel to obtain enhancement
10 on the guidelines.

11 Now, if I may, Your Honor, I cite United States v.
12 Farrow, a case from 1999, which calls this an "impermissible
13 double counting that is just simply reimposition of an issue
14 which has been decided earlier."

15 Now, as far as if these alleged factual conducts and
16 these -- if these alleged conducts have occurred or the
17 veracity of this allegation, we'll have to cross-examine a few
18 witnesses. I have two witnesses that would speak to the
19 calculation of the guidelines specifically, including to this
20 plus-eight enhancement, Your Honor.

21 Now, I can proceed by cross-examining those witnesses
22 at this time or any time the Court is ready for that, having
23 noting that one of my witnesses is yet to arrive, and he is
24 actually practicing law in this court. I think he's caught up
25 with some other hearings. He'll be here about ten o'clock,

1 Your Honor. But I have one witness speaking to this specific
2 issue at this time.

3 THE COURT: Okay. You understand you will not be
4 cross-examining him. You will be presenting him as your
5 witness, and you will not be allowed to lead them. Do you
6 understand?

7 MR. BAKHTIARI: I will be -- well, the Government
8 will pose questions, and so will I. Is that not allowed, Your
9 Honor?

10 THE COURT: Well, if the United States calls them,
11 then they will direct them, and then you would cross-examine
12 them.

13 MR. BAKHTIARI: Yes.

14 THE COURT: Are you going to present any witnesses,
15 Mr. Sauer?

16 MR. SAUER: I have certain witnesses available,
17 Judge. I had planned and prepared to have Mr. Brad Hiles, who
18 is the principal in this case, testify, and it would be
19 helpful to the Court, as well as Mr. Fogarty, who is outside.

20 THE COURT: All right. Very well.

21 MR. BAKHTIARI: Will I be able to proceed after
22 Mr. Sauer and pose questions to those witnesses, Your Honor?

23 THE COURT: Yes.

24 MR. BAKHTIARI: Thank you. I have also two witnesses
25 directing -- speaking directly to this eight-level

1 enhancement.

2 THE COURT: All right.

3 MR. BAKHTIARI: Thank you, Your Honor.

4 THE COURT: Thank you.

5 Mr. Sauer, are you ready, sir?

6 MR. SAUER: I am, Your Honor. And I guess maybe the
7 most sufficient use of the Court's time would be to proceed
8 directly with the testimony prior to argument on this because
9 I believe Mr. Hiles' testimony will directly address this
10 eight-level disputed enhancement.

11 THE COURT: Very well. Please come forward. Raise
12 your right hand, sir.

13 (WITNESS SWORN BY THE CLERK.)

14 THE COURT: You may inquire.

15 **BRADLEY S. HILES,**

16 **HAVING BEEN FIRST DULY SWORN, WAS EXAMINED AND TESTIFIED AS**
17 **FOLLOWS:**

18 **DIRECT EXAMINATION**

19 **BY MR. SAUER:**

20 Q Could you please state your name, sir?

21 A Bradley S. Hiles.

22 Q What is your occupation?

23 A I'm an attorney here in St. Louis.

24 Q What firm are you employed with?

25 A Husch Blackwell, LLP.

1 Q How long have you been an attorney?

2 A For 32 years.

3 Q Are you familiar with a man called Alireza Bakhtiari, or
4 Al Bakt?

5 A Yes, I am.

6 Q And is that person present in the courtroom today?

7 A He is.

8 Q How do you know Mr. Bakhtiari?

9 A I have defended one charge of discrimination and two
10 civil lawsuits filed by Mr. Bakhtiari against a couple of my
11 clients, Career Education Corporation and Missouri College.

12 Q And very briefly, I don't want to get into any kind of
13 mini trial on the issues, can you summarize the nature of the
14 charges in those three matters and how they were disposed of?

15 A Yes. In 2009 Mr. Bakhtiari filed a charge of national
16 origin discrimination and retaliation. He filed it with the
17 Missouri Commission on Human Rights. And I represented those
18 two educational institutions that I just identified, and that
19 resulted in a settlement through mediation before the Missouri
20 Commission on Human Rights. So it did not go to the civil
21 lawsuit stage.

22 Q Is it fair to say that that was settled very early in the
23 proceedings?

24 A It was.

25 Q Did that settlement involve any kind of admission of

1 wrongdoing on the part of Missouri College or its affiliates?

2 A No. To the contrary, the settlement agreement contained
3 a strong nonadmissions clause.

4 Q Was there subsequent litigation between Mr. Bakhtiari and
5 your clients?

6 A Yes, there was. In 2010 Mr. Bakhtiari filed what can
7 generically be described as a defamation lawsuit against
8 Missouri College and, I believe, its president, Carl Peterson,
9 and against a staff member. I also defended that lawsuit.

10 Q How was that lawsuit resolved?

11 A That was also resolved through a settlement, again in
12 mediation, and it was a rather early mediation in the process.
13 The civil action was brought here in the U.S. District Court
14 for the Eastern District of Missouri.

15 Q Was that mediation settlement -- that mediation
16 settlement, did it involve any admission of wrongdoing by your
17 client?

18 A Similar to the discrimination charge, there was a
19 settlement agreement, and the settlement agreement contained a
20 strong nonadmissions clause.

21 Q Without concealing any communications, potentially
22 privileged communications between yourself and your client, is
23 it fair to say that those two settlement decisions were made
24 for cost benefit or strategic purposes?

25 A Absolutely for cost benefit purposes, yes.

1 Q And specifically, the cost of litigating these matters
2 would have been significant?

3 A They would have, yes.

4 Q Was there a third lawsuit filed by Mr. Bakhtiari against
5 your clients?

6 A There was. In 2011 he filed another pro se defamation
7 lawsuit. The allegations in that lawsuit were similar to the
8 allegations in the first lawsuit. He brought it once again in
9 the U.S. District Court for the Eastern District of Missouri,
10 and again I defended Missouri College and its president, Carl
11 Peterson.

12 Q Without getting into any communications, is it fair to
13 say that a decision was made to vigorously defend this
14 particular lawsuit?

15 A Most certainly it was, yes.

16 Q And was this lawsuit pending in front of Judge Limbaugh,
17 Jr.?

18 A Yes. It is pending before him, yes.

19 Q Did you file a motion for expedited discovery in that
20 lawsuit?

21 A I did. It was a motion for expedited discovery, and it
22 was coupled with a motion for a protective order asking the
23 Court to grant defense counsel access to Mr. Bakhtiari's
24 electronic equipment and also asking the Court to issue an
25 order whereby he would not destroy or tamper with that

1 equipment before we had that access.

2 Q What was the purpose of seeking to examine Mr.

3 Bakhtiari's electronic equipment?

4 A The allegations on which his lawsuit were based involved
5 a letter on Missouri College letterhead that I believed had
6 been forged. In fact, it was my belief that the letter had
7 been forged by Mr. Bakhtiari.

8 Q If I may interrupt you there, did you prepare a lengthy
9 victim impact statement in this case?

10 A I did.

11 Q And has that been submitted to the Court as part of the
12 Government's sentencing filings?

13 A I believe that it has.

14 Q To the best of your knowledge, is everything you said in
15 that victim impact statement true and correct?

16 A Yes, it is.

17 MR. SAUER: Judge, I'd just like to incorporate by
18 reference Mr. Hiles' victim impact statement that goes into
19 more detail on these issues. That's been filed as Exhibit B
20 to the Government's sentencing memorandum in this case.

21 THE COURT: Very well. Received.

22 Q (BY MR. SAUER) So you had testified a moment ago that you
23 suspected that the letters on which the lawsuit were based,
24 the third Bakhtiari legal matter were based, were forged, and
25 you sought electronic inspection of his electronic equipment

1 in order to verify that suspicion; is that correct?

2 A That's correct.

3 Q Did Judge Limbaugh grant that order?

4 A He did.

5 Q Or that motion, I apologize.

6 A Yes. On December 30, 2011, he granted the motion. And
7 in granting the motion, he directed Mr. Bakhtiari to produce
8 his electronic equipment within 14 days.

9 Q So would that be by -- to produce it by January 14?

10 A Actually maybe the 13th, but I may be off by a day or
11 two. It was either the 13th or 14th, yes.

12 Q Did Mr. Bakhtiari produce any electronic equipment for
13 discovery within the time allotted by Judge Limbaugh's order?

14 A He did not.

15 Q Did you take any action as a result of his failure to do
16 so?

17 A Yes, I did. On January 14 I filed a motion for sanctions
18 and for contempt with Judge Limbaugh informing the Court that
19 Mr. Bakhtiari had not complied with the Court's order and
20 produce the electronic equipment.

21 Q And that was filed -- you say that was filed on January
22 14?

23 A It was. It was -- if I know I have the day right, the
24 day was Saturday afternoon, and I believe that was January 14,
25 yes.

1 Q What sanctions did you seek against Mr. Bakhtiari at that
2 time?

3 A I sought dismissal of his civil action, and I also sought
4 attorneys' fees. As far as the contempt angle went, I left
5 that, as I should, to Judge Limbaugh.

6 Q You say that was filed on Saturday, January 14, to the
7 best of your recollection?

8 A Yes, sir.

9 Q During this time period, had you had interactions
10 face-to-face with Mr. Bakhtiari?

11 A Yes, I had. Not that day, but for --

12 Q In the course of three years of litigation, you met him
13 face-to-face.

14 A Three years. Yes, I did.

15 Q Did he also have your phone number?

16 A He did.

17 Q Did he also have your work email address?

18 A Yes, he did.

19 Q Did you receive an email at your work email address late
20 in the evening of the following day, Sunday, January 15, 2012?

21 A Yes, I did.

22 Q And when did you actually become aware of that email or
23 open it?

24 A I opened it the next morning, which would have been
25 Monday morning.

1 Q Your Honor, may I approach the witness?

2 I'm handing you about six sheets of paper stapled
3 together that are collectively marked as Government's Exhibit

4 1. Do you recognize those papers?

5 A Actually, if I could get my reading glasses. Thank you.
6 Yes, I recognize these papers.

7 Q What are those papers?

8 A This is an email message that I received. It was
9 actually received in my office email outbox at 10:41 PM on
10 Sunday, January 15. This is the email that I opened the
11 morning of Monday, January 16.

12 Q And did that document -- is that a true and accurate
13 collection of that email and its attachments that you received
14 in the in-box on January 15 and opened in the morning of
15 January 16?

16 A Yes, it is.

17 MR. SAUER: Your Honor, I move for the admission for
18 the purpose of the sentencing hearing of Government's Exhibit
19 1.

20 THE COURT: Received.

21 MR. SAUER: May I retrieve?

22 THE COURT: Yes.

23 Q (BY MR. SAUER) What day of the week was January 16?

24 A It was a Monday, and it was actually Martin Luther King's
25 day.

1 Q So it was -- was it a federal holiday?

2 A It was.

3 Q And is that the day that you actually opened this email
4 in the morning hours?

5 A Yes, sir.

6 Q I don't want to go into any of the -- and I want to read
7 this language out loud, but when you received this email, did
8 you have a suspicion or belief as to who had sent it to you?

9 A Yes, I did.

10 Q Who did you believe that that was?

11 A Alireza Bakhtiari.

12 Q I just want to start at the top of this email. Can
13 you -- is the email displayed on the screen in front of you?

14 A It is.

15 Q On the -- what's indicated in "from," the sender of the
16 email, what's indicated there?

17 A Jamie and Eric Hiles. And then an email address of
18 theyoung.hiles@gmail.com.

19 Q Who are Jamie and Eric Hiles?

20 A Eric Hiles is my son, and Jamie is his wife. They were
21 married a few months before my receipt of this email.

22 Q And directing your attention to the subject line, what
23 does it say there?

24 A "Eric and Jamie sitting in a tree."

25 Q And then directing your attention to the body of the

1 email, I don't want to read the language, but this word
2 "dearest" in the salutation line, "Bradley boy, my dearest,"
3 did that word strike you in any way?

4 A It did. And he also used the word "dear" in the text of
5 the message. In my encounters with Mr. Bakhtiari, I had
6 experienced him using the word "dear" or some derivative of
7 the word "dear" when being condescending towards people.

8 Q And then there is a word here that begins with "C" that I
9 won't say out loud. Had you heard Mr. Bakhtiari use that
10 word?

11 A Yes, I have.

12 Q Frequently or on multiple occasions or just one time?

13 A It was more than one time.

14 THE COURT: Go ahead and put it in the record because
15 the Court of Appeals needs to know what the word is.

16 Q I apologize, Your Honor. Here in the first line it says,
17 "Since I've known you, you have been a good cunt." The word
18 "cunt," is that a word that you had known Mr. Bakhtiari to
19 use?

20 A Yes, it is.

21 Q And is that word "cunt" repeated in the email?

22 A Yes, it is.

23 Q Then the word "dearest" and "dear," are those words that
24 you also knew him to use in a condescending fashion?

25 A That's correct.

1 Q I just want to direct your attention to the attachments
2 line. Were there attachments to this email when you received
3 it?

4 A Yes, there were.

5 Q And were they also JPEG files or images?

6 A Yes.

7 Q Could you read the first three titles of the attachment?

8 A The first three are: Brad and Toni-1; Brad and Toni-2,
9 and Brad and Toni-3.

10 Q Who is Toni?

11 A Toni is my wife.

12 Q And were you aware that he knew your wife's first name?

13 A I was not aware of that.

14 Q I'm going to direct your attention now to the next three
15 pages of this document. Is it fair to say that these are all
16 photographs of a house?

17 A Yes, they are.

18 Q What house is that?

19 A It's my house.

20 Q And were those three photographs that are the next three
21 pages of this document, were those the JPEG images that were
22 titled "Brad and Toni-1"; "Brad and Toni-2"; and "Brad and
23 Toni-3"?

24 A That's correct.

25 Q I now want to direct your attention to the next two JPEG

1 images attached to the file. Could you read the title of
2 those?

3 A "EJH-11" and "EJH-21."

4 Q What did you believe EJH to stand for when you opened
5 this email?

6 A I believe it was a reference to my son, Eric, and my
7 daughter, Jamie, the last initials being Hiles.

8 Q So you thought that stood for Eric and Jamie Hiles?

9 A Yes. And if I said daughter Jamie, I meant
10 daughter-in-law.

11 Q And then directing your attention to the next two pages
12 of the exhibit, is that -- is this what was portrayed when you
13 opened the JPEG image EJH-11?

14 A Yes, it is.

15 Q Had you seen that photograph before?

16 A Well, certainly not with a rifle scope cross hair on it,
17 but that is a photograph of my daughter-in-law, Jamie, taken
18 at her wedding.

19 Q And then the next page of this, can you describe what's
20 in that picture?

21 A That is another wedding photograph, this time with Jamie
22 and my son Eric. Obviously, I had never seen it with a rifle
23 scope cross hairs superimposed on my son's head.

24 Q And is that what was under EJH-21?

25 A Yes, it is.

1 Q Then was there one more JPEG image attached to this
2 email?

3 A Yes. It is simply entitled "Emily.jpg."

4 Q Then what was portrayed when you opened that one?

5 A It's a picture of a girl. I do have a daughter named
6 "Emily." That is not a picture of my daughter, Emily.

7 Q Did you Google your daughter's name, "Emily Hiles"?

8 A I did. Later that day, trying to figure out what that
9 picture might have been, I Googled "Emily Hiles," and I found
10 that very image on a screen that had several other images.
11 That screen contained images of the Emily Hiles who is my
12 daughter.

13 Q Were you aware that Mr. Bakhtiari knew your daughter's
14 name?

15 A I was not aware that he knew her name, no.

16 Q How did you react emotionally to the receipt of this
17 email when you first opened it in the morning of January 16 of
18 2012?

19 A I was shocked. I was horrified. And I just kept it to
20 myself and tried to ponder the situation and the gravity of it
21 for a while, probably thirty minutes, but maybe an hour.

22 Q Did you believe that it was a threat of violence against
23 members of your family?

24 A I absolutely did.

25 Q Did you believe that there was an implied threat in the

1 portrayal of your own house in that email?

2 A Yes, I did.

3 Q What threat did you perceive there?

4 A Well, it told me that Mr. Bakhtiari knew where I lived
5 and that he had quite possibly taken photographs of my house
6 to send them to me as part of this threat, of windows in the
7 front of the house or windows that we walk by and sit by, in
8 one case sleep near.

9 Q What about the rifle cross-hair graphics on the face of
10 Brad -- of Eric and Jamie, how did you react to those?

11 A That was the most horrifying part of it. We had just
12 been to their wedding, obviously, in Tampa, Florida. I had
13 been the best man in the wedding. A time that should have
14 been, and was at that time, a very happy moment of celebration
15 had been used against me to threaten me, to scare me, and to
16 scare my son and daughter-in-law.

17 Q Did you convey information about this threat to members
18 of your family?

19 A Yes, I did. After or within about an hour, I spoke to my
20 wife, Toni. I had an initial reluctance to talk to her about
21 it because of the graphic and horrifying nature of the
22 pictures of Eric and Jamie, but I did share it with her, and
23 she was devastated by it. She cried.

24 And so we spent some time talking through it, and she
25 had some questions for me, obviously, about Mr. Bakhtiari and

1 his character and his nature. So yeah, I started with talking
2 to Toni. I'm sorry.

3 Q Did you go on to convey information about this threat to
4 your children?

5 A I did. I called Eric and Jamie, who were actually at
6 home that day. They were not working as well. And I did not
7 forward the message to them, but I did read the text of the
8 message. I told them about the photographs, and I told them
9 about the graphic photographs of them with the cross hairs.

10 Q And what was their reaction to this information?

11 A They were scared. They were -- there was a certain
12 amount of stunned silence to it, I have to tell you. They are
13 smart kids. They are both attorneys. Jamie had been a
14 state's prosecutor up until about six months before this
15 event, and then they had moved to DC, but as a prosecutor
16 she -- I mean, she encounters issues like this, and she, in
17 particular, took it very, very seriously.

18 Q Did you also convey information about this threat to
19 Emily?

20 A I did. Later, not on the same call, but later that day I
21 called Emily as well.

22 Q And was she also -- did she also express fear and alarm
23 about the incident?

24 A Very much so. In fact, she cried about it and was so
25 distraught that we actually had to reconvene that call a

1 little bit later.

2 Q Did you discuss this issue with any colleagues at Husch
3 Blackwell on the same day?

4 A I did. I called my partner, Glennon Fogarty, from home,
5 and he agreed to meet me in the office. I think Glennon was
6 taking the day off as well. And so at my office I opened the
7 message on my computer screen, and Glennon read it and saw the
8 images.

9 Q Did you and Glennon, acting together, make any attempt to
10 contact law enforcement regarding this threat?

11 A Yes, we did. We called the U.S. Attorney's office, your
12 office, not you, but one of your colleagues, Jim Crowe.

13 Q And did you make him aware of the threat?

14 A Yes, we did.

15 Q And were you aware that a federal investigation was
16 commenced almost immediately, beginning the next morning?

17 A Yes, I was aware of that.

18 Q Did you remain in sort of cooperation or communication
19 with Mr. Follmer in the course of this investigation?

20 A I did.

21 Q Have you and your family continued to experience fear and
22 anxiety about this threat?

23 A Yes, we have.

24 Q Go ahead. Could you summarize that for us?

25 A Well, I mean, we have taken some measures at our home,

1 Toni and I have. Our children have taken some measures. But
2 despite those, we were always fearful of that knock at the
3 door or some crash or some visit or some tail by Mr.
4 Bakhtiari.

5 Q Did you contact local police in any attempt to beef up
6 security in your home?

7 A I contacted a police official to talk through the
8 possibilities. What I ultimately concluded from that was,
9 there's no way to get around-the-clock protection, especially
10 protection for a bullet crashing through a window. But yes, I
11 did.

12 Q Is your house in a crowded area, or is it a relatively
13 isolated area?

14 A It is very isolated.

15 Q And has that had any effect on your -- you and your
16 wife's anxiety regarding this incident?

17 A It's caused even greater concern because it's accessible
18 through that isolation.

19 Q Have you all taken any personal security precautions, for
20 example, when people come to your door?

21 A Absolutely. We have a routine at our house now whenever
22 there's a knock at the door or the doorbell rings, and
23 frankly, I'd rather not describe that routine.

24 Q Without any further details, you have a routine to take
25 precautions whenever anyone comes to the door?

1 A Yes.

2 Q Have your children continued to experience alarm,
3 anxiety, fear about this incident?

4 A Very much so. I have a daughter, and I'd rather not say
5 where she lives, but she is somewhat local in the St. Louis
6 metropolitan area. I did take some steps to determine the
7 make and color of Mr. Bakhtiari's car so that I can inform our
8 children. And this daughter who lives in the St. Louis metro
9 area has called me to tell me that she felt like she was -- or
10 she believed she was being tailed by a car of that
11 description.

12 Q Did you also share photographs of Mr. Bakhtiari with your
13 wife and your children?

14 A Yes, I did. I obtained a few photographs from the
15 internet and forwarded those to my kids and printed them out
16 for Toni.

17 Q What was the purpose of that?

18 A So they would know what he looks like in case he
19 approached them.

20 Q Did you ever receive any kind of apology from Mr.
21 Bakhtiari for sending the email?

22 A Not once.

23 Q Is Mr. Bakhtiari's civil lawsuit still pending against
24 your client?

25 A It is.

1 Q Do you have any views as a victim in this case as to
2 whether or not Mr. Bakhtiari should be sentenced to a term of
3 imprisonment?

4 A I do.

5 Q What are those views?

6 A Your Honor, I would ask that you sentence him to the
7 maximum term that's been requested by the U.S. Attorney. I
8 obviously haven't seen the presentence reports, so I don't
9 know what's in there, but my family and I are scared. I would
10 ask that he be put in a prison for many years and that during
11 that time he be denied access to the internet, and upon his
12 release, which I would hope would be a supervised release at
13 least for a period of time, that he not be allowed to utilize
14 the internet at that time either.

15 Q I forgot to ask you. Did you become aware of an incident
16 involving the actual display of a loaded rifle to your
17 colleague, Mr. Fogarty?

18 A I most certainly did.

19 Q When did that occur?

20 A That occurred on -- well, Monday was the day that I
21 opened the email. It was either the next day or the following
22 day. I believe it might have been the -- yes, it was the
23 following day, so it would have been Wednesday.

24 Q And we're going to hear from Mr. Fogarty about that, but
25 can you just describe what the effect that that incident had

1 on the anxiety of you and your family?

2 THE COURT: Okay. Wait a minute. I thought you got
3 the email on Sunday and looked at it on Monday.

4 THE WITNESS: That's correct, Your Honor.

5 THE COURT: So it would be Tuesday the --

6 THE WITNESS: No. I believe it was actually
7 Wednesday when Glennon Fogarty was at Mr. Bakhtiari's house.

8 THE COURT: Okay.

9 Q Can you just describe what effect that incident had on
10 your -- the anxiety of you and your family?

11 A Yeah. It heightened it because it not only confirmed
12 that he had sent the email, it was a very clear signal that he
13 wanted me to know he had sent the email, and furthermore, that
14 he had a gun with a scope and cross hairs and he knew how to
15 use it.

16 MR. SAUER: That's all the questions I have, Your
17 Honor.

18 THE COURT: Okay. Just a second. I want to catch up
19 here. Again state the identity of Glenn Fogarty.

20 THE WITNESS: It's Glennon. G-L-E-N-N-O-N Fogarty,
21 F-O-G-A-R-T-Y. And he's my law partner.

22 THE COURT: Thank you. You may inquire.

23 MR. BAKHTIARI: Thank you, Your Honor.

24 **CROSS-EXAMINATION**

25 **BY MR. BAKHTIARI:**

1 Q Good morning, Mr. Hiles. Given the fact that this pains
2 me severe on your family, I'm going to make this quick. Mr.
3 Hiles, are you aware that the indicted count, 18 U.S.C.
4 875(C), which had you as the victim, that count has been
5 dismissed? Are you aware of that?

6 MR. SAUER: Objection. Beyond the scope of the
7 witness' personal knowledge.

8 THE COURT: Well, I'm not sure yet. Overruled. If
9 you know. Don't guess or speculate.

10 A I don't know if it's been dismissed.

11 Q Do you know if you're currently an active victim before
12 these proceedings in this court?

13 A I most certainly do know that. Yes, I am a victim.

14 MR. BAKHTIARI: Thank you.

15 Your Honor, I have a few exhibits that has been
16 produced to Mr. Sauer as initial disclosures. Now, I have
17 copies for you, the witness, and Mr. Sauer.

18 THE COURT: All right.

19 MR. BAKHTIARI: May I hand these out and question
20 about them?

21 THE COURT: If you would give them to the clerk,
22 she'll hand them up.

23 MR. BAKHTIARI: Yes, Your Honor. One for the
24 witness, one for the honorable judge, if I may, and this is
25 your copy, sir.

1 THE COURT: For the record, this appears to be a
2 docket sheet in this case.

3 Q (BY MR. BAKHTIARI) Sorry for the delay. Mr. Hiles, have
4 you seen this docket?

5 A I don't know that I've seen this version of the docket.

6 And, Your Honor, if I may just for the record, this
7 appears to be the docket in a civil action pending before
8 Judge Limbaugh.

9 THE COURT: Okay.

10 A Not the docket in your criminal case.

11 THE COURT: Oh, I see. Yes. Thank you. That's
12 correct.

13 Q May I ask you to read for the Court the attorneys who
14 have entered their appearance on behalf of the defendants in
15 that case?

16 A Myself, Glennon Fogarty, and Anthony Grice.

17 Q And are there other attorneys involved representing other
18 parties who are defendants?

19 A I do not see them listed on the first sheet of this case.

20 Q Do you know if there were other defendants in this suit
21 involved?

22 A There was.

23 Q Who was that defendant?

24 A The staff member at Missouri College. Her name is
25 escaping me now.

1 Q Could that be, by any chance, Ms. Patricia Leader?

2 A Patricia Leader Frank. And she was represented by Frank
3 Vatterott.

4 Q Would that be fair to say that Attorney Vatterott and
5 Attorney Paul Devine represented that defendant?

6 A That's correct.

7 Q Did -- throughout those proceedings, did Attorney Paul
8 Devine file several dismissal motions and dismiss almost half
9 of the plaintiff's counts in that suit?

10 THE COURT: Okay. Now, this is what I don't want to
11 get into, is retrying some kind of a civil case. How is that
12 possibly relevant to this matter?

13 MR. BAKHTIARI: Yes, Your Honor. Because another
14 attorney was doing a lot of heavy lifting and had succeeded in
15 dismissing the main defendant has not been threatened.

16 Now, the allegation is a simple allegation -- a
17 simple motion for sanction has become a motive to threaten and
18 horrify an innocent family.

19 THE COURT: But how is it relevant to what happened
20 in the civil case? How is that relevant?

21 MR. BAKHTIARI: Well, it's just a matter of
22 establishing the motive, because the attorney for Government
23 alleged that a sanction motion was the motive, and another
24 attorney, who is Attorney Paul Devine, who did most of the
25 heavy lifting in that civil suit, he did not receive any

1 threat.

2 THE COURT: Okay. So your plan is to say that this
3 other attorney is the one who threatened him and not you?

4 MR. BAKHTIARI: No. My plan is to say there is no
5 motive here. The motive is not -- is absolutely inconsistent
6 with what's happened in that civil suit and what the docket
7 reflects.

8 THE COURT: Well, it seems so tangential. I'll allow
9 you one more question, and then let's move on to something
10 else.

11 Q (BY MR. BAKHTIARI) Yes, Your Honor.

12 About this specific docket, Mr. Hiles, is this the
13 second lawsuit which was filed in 2010?

14 A It was the first lawsuit. It was your second civil
15 action against Missouri College and Career Education
16 Corporation.

17 Q Did you -- did your law firm approach me and propose a
18 global settlement for this suit?

19 A I don't know what my law firm did. I engaged in
20 settlement negotiations. I would not call it a global
21 settlement because I wasn't speaking on behalf of all of the
22 defendants, but, yes, I agreed to participate in the court's
23 early mediation program, and we met before a mediator, and I
24 was the chief negotiator in that mediation.

25 Q Would that be fair to say that you proposed settlement

1 and you encouraged that?

2 A I don't know if that's fair to say or not. The mediator
3 participated, I participated, and you participated. There
4 were settlement offers and counteroffers that were made
5 throughout the day. Sitting here right now, I don't remember
6 who made the first offer.

7 Q Did you suggest your old friend, Richard Sher, to act as
8 the mediator?

9 MR. SAUER: I object to the relevance.

10 THE COURT: Yeah. This is irrelevant. I'm not going
11 to -- I told you, I'm not going to retry those lawsuits.

12 MR. BAKHTIARI: Yes, Your Honor.

13 THE COURT: Sustained.

14 Q (BY MR. BAKHTIARI) If I may, I will move on from that
15 point. Well, you already touched on these issues. Did we
16 settle the first set of civil suits in April of 2009?

17 MR. SAUER: Same objection, Your Honor.

18 THE COURT: Well, overruled. Let me hear it, but
19 again, I don't want to try those lawsuits.

20 MR. BAKHTIARI: Yes, Your Honor.

21 THE COURT: One question.

22 A We did not settle a first round of civil lawsuits in
23 April of 2009. We did sometime in 2009, possibly in April,
24 settle a charge of discrimination and retaliation pending
25 before the Missouri Commission on Human Rights.

1 Q Did I correspond with the general counsel of Missouri
2 College back in 2009, Mr. Jeff Ayers?

3 A I don't know whether you did or not.

4 Q Do you recall that I met with general -- one of the
5 general counsel members of college in that mediation, Ms.
6 Laura Fisher?

7 MR. SAUER: Objection to the relevance.

8 THE COURT: Yeah. You know, we're going to stop.
9 You tell me how this could possibly be relevant to anything
10 today.

11 MR. BAKHTIARI: Your Honor, the individuals who have
12 the critical say about discovery or settlement in those civil
13 suits are the members of this general counsel of college and
14 also the president of the college, Mr. Carl Peterson. These
15 are the people who have the key say. None of them have
16 received a threat. An attorney who had somewhat of a minor
17 role claims to have received the threat from me to influence a
18 civil suit; that these line of questioning is addressing
19 simply the motive and the whole intent premise. Honorable
20 Limbaugh has the final say on discovery and settlement
21 matters. He never received a threat.

22 THE COURT: Well, you know --

23 MR. BAKHTIARI: I never --

24 THE COURT: -- there could be a thousand people who
25 didn't receive threats. We're talking about who did receive

1 threats. It's irrelevant.

2 MR. BAKHTIARI: That's right, Your Honor. Your
3 Honor, I have Hiles Exhibit 2, if I may.

4 THE COURT: All right. Thank you.

5 Q (BY MR. BAKHTIARI) Mr. Hiles, may I ask you to look at
6 those sets of email correspondence? Do you recognize the
7 first email, the first page?

8 A I don't understand your question.

9 Q Do you recognize the first email, the first sheet
10 basically on that exhibit?

11 A I don't remember reading this. I'm sure that I did. It
12 was a carbon copy of this email was sent to me. I see it now.
13 What's your question?

14 Q May I ask you to go to the second page? The content of
15 the emails starts with, "Don't bother, Dick." May I ask you
16 to read -- it's a one-line email. May I ask you to read that
17 aloud for the record?

18 A "Don't bother, Dick. I won't dignify plaintiff's
19 insulting messages by further responding to him or by wasting
20 your time."

21 Q Are you the signatory to the email?

22 A Yes.

23 Q Does the email say that down the road or prior to that, I
24 had insulted you in some correspondences? If you'll flip
25 through the other pages, if you want.

1 A Yeah. I will be glad to do that.

2 Q May I help out here by pointing to where I'm addressing?

3 A I would appreciate it if you would give me an opportunity
4 to read these multiple emails before I answer any questions.

5 Q Yes. Please.

6 A I reviewed the emails.

7 Q Now, on the second page it appears to be an email from me
8 to a number of people, including you. The part that says:
9 "Dear, Dick, I may have been -- it may have been that your old
10 friend and colleague had been an admirable just -- jurist
11 sometimes in the past, but at this time we are all concerned
12 with resolving or alternatively process -- proceeding with
13 discovery in this case. Let the old stories of has-beens and
14 bygones be gone. Brad is obsessively pursuing something which
15 he does not utter in the case, which is admittedly settled."

16 And then I proceeded by saying, "One may just
17 speculate if it is these geriatric signs of senility, which
18 include our progress in this final wrap-up."

19 Do you recall that in the first page email you
20 objected to the language and the offensive nature of what I
21 had written to you?

22 A I didn't object to it. What I told Mediator Dick Sher
23 was that I was not going to dignify your insults by a
24 response. The insults consisted of you calling me a
25 "geriatric senile old jurist," calling me "obsessive," and it

1 followed some emails in which you sent ex parte messages --
2 well, not ex parte, but you sent messages directly to my
3 client, Laura Fisher, after I had asked you not to communicate
4 directly with my client because I was the counsel of record in
5 the case.

6 Q That --

7 A So it was a series of insults that were in this string
8 and improper communications that were in the string, and I was
9 simply telling Dick Sher: I'm not going to respond to
10 insults.

11 Q May I impose my question at this time about that? Even
12 though they were insulting, were they sent to you directly, or
13 were they sent from an anonymous email?

14 A They were sent to me by Al_Bakt@hotmail.com just as
15 directly as your threatening email was sent to me the night
16 before Martin Luther King's day. They both arrived in my
17 in-box.

18 Q That is correct. Now, the matters of that alleged email
19 aside, about the emails that are in that Exhibit No. 2 in
20 front of you, the insults and aggressive language, they were
21 sent to you in a matter of face-to-face rather than from an
22 anonymous email; is that fair to say?

23 MR. SAUER: I object to this question as being asked
24 and answered, as being irrelevant, and I object to any further
25 questions in this line of correspondence.

1 THE COURT: Well, here's the problem. You know,
2 you're just digging a deeper hole for yourself. I mean, this
3 shows animosity between you and him before this ever happened.
4 How -- it's just exactly the kind of thing as to why you need
5 a lawyer. Those kind of things would never come up if you had
6 a lawyer. You're hurting yourself.

7 MR. BAKHTIARI: If I may, Your Honor, at times when
8 there were an animosity, it has been exhibit to Mr. Hiles in
9 his face directly. And the history shows that at the time of
10 conflict, we have gone face-to-face rather than from a back
11 alley from an anonymous email.

12 But if I may, I will move on from that exhibit for
13 the benefit of time. Exhibit No. 3, if I may.

14 THE COURT: All right.

15 Q (BY MR. BAKHTIARI) Thank you. Here is your copy. Mr.
16 Hiles, may I ask you to -- that is also a string of emails
17 that have been exchanged. A couple of pages -- actually one
18 page down the road is an email which purportedly has been sent
19 from you. Starts with "Al Bakt."

20 "Mr. Bakt, Arbitrator Sher has informed me that you
21 contacted him." And then the rest.

22 And the second paragraph, do you recall that you
23 objected by saying: "While it may boost your ego, you will
24 not foster a spirit of cooperation with me by questioning my
25 ability to decipher my own words, insulting my knowledge of

1 metadata, or insulting me on the duty to preserve evidence in
2 its original format"? Do you recall that email?

3 A I do.

4 Q So do you recall that, even though an insult, as
5 inappropriate that it could be, but it was at least said to
6 you directly rather than from an anonymous email?

7 A I'm not sure there's a question in there, but I did
8 consider your email to me, which you have not attached to this
9 string, to be insulting and condescending.

10 Q That is correct. And you admit on the record that even
11 though it was an insult, it was said to you directly?

12 MR. SAUER: I object. Asked and answered,
13 irrelevant, and I object to further line of questions on this
14 exhibit.

15 THE COURT: Well, I will overrule. You may answer
16 the question, and then we will move on. Do you understand?
17 His question is, do you understand this one was sent directly
18 and not anonymously?

19 A I believe that Mr. Bakhtiari sent both of them directly,
20 so it's difficult for me to answer that, but I will
21 acknowledge that this particular email was sent from his
22 account, Al_Bakt@hotmail.com.

23 THE COURT: All right.

24 Q Was this an anonymous email to you?

25 THE COURT: He's -- okay. Go ahead. Answer the

1 question. If you can, answer the question.

2 A Your email to me that you have not produced in here that
3 led to my response of March -- well, I don't even know the
4 date of my response because you've conveniently deleted that
5 as well, but whatever date I responded in likely March of
6 2011, I believe that was sent by you. Yes.

7 Q And not from an anonymous email somewhere?

8 A Mr. Bakhtiari, I don't know if you sent it from an
9 anonymous email or not because I don't have it here, you know.

10 Q Thank you.

11 A You didn't put it in here.

12 Q If I may, Your Honor, I will move on to the next, Exhibit
13 No. 4.

14 MR. SAUER: Judge, I would just like to say for the
15 record that Mr. Bakhtiari represented to you at the beginning
16 of this line of cross-examination that I had received all of
17 these. I have not. I am seeing them for the first time, so I
18 will be objecting on the grounds of discovery violations using
19 these exhibits.

20 MR. BAKHTIARI: Well, Your Honor, the Government
21 received a large package of initial disclosures. When I was
22 granted leave to proceed as a pro se cocounsel and with a
23 letter on top of that disclosure, Mr. Sauer was informed that
24 potentially all those contents would be used in the pretrial,
25 trial, or post-trial hearing and those proceedings. Now it is

1 awfully convenient to say "I don't have these."

2 THE COURT: Okay. You're saying you have already
3 sent him this?

4 MR. BAKHTIARI: Yes, Your Honor. There's nothing in
5 these that Mr. Sauer has not seen before.

6 THE COURT: Very well. Proceed.

7 Q (BY MR. BAKHTIARI) Mr. Hiles, my only question about that
8 is the first line. Do you recall seeing that line from the
9 mediator or arbitrator in that case?

10 THE COURT: What are you saying the first line? I
11 mean --

12 Q It says, "Al, I received your voice mail, and I do not
13 think there is anything inappropriate with you asking for a
14 deadline for completion of the settlement." Do you recall
15 seeing that line?

16 A I don't remember one way or the other.

17 Q About that suit back in 2010, do you recall if we finally
18 settled it and moved on?

19 A We finally settled it, yes.

20 Q Did I get my check?

21 A We did not move on. You sued again.

22 Q That's right. In 2010 did I get my check after these
23 correspondences?

24 THE COURT: That's irrelevant. That's irrelevant
25 whether you got your check or not. I don't want to try these

1 cases again.

2 MR. BAKHTIARI: Yes, Your Honor.

3 THE COURT: I don't know how to make it any clearer
4 to you: Not trying these cases.

5 MR. BAKHTIARI: Yes, Your Honor.

6 THE COURT: Now, go ahead. Get on with what's
7 relevant here today, please. Nothing you've shown has any
8 relevance whatsoever to these issues as to whether or not
9 you've made threats to this witness.

10 Q (BY MR. BAKHTIARI) Yes, Your Honor. I apologize again.

11 The last question on that issue, if I may, did I use
12 any threats or violence to accomplish a settlement back in
13 2010?

14 A You made statements that I considered threatening to my
15 clients but none that I considered threatening to me.

16 Q Did you ever have to call the police or the federal
17 officers for help back in 2010 or '11?

18 A I did not.

19 Q Is that fair to say that correspondence and due process
20 accomplished what I wanted to accomplish?

21 MR. SAUER: Objection. Calls for speculation into
22 the mind --

23 THE COURT: Yeah, sustained. Move on to something
24 else that's relevant.

25 MR. BAKHTIARI: Yes, Your Honor. If I may, Exhibit

1 5, if I may. Thank you.

2 THE COURT: Again, is this something -- before we
3 even start this, this is something from one of those other
4 cases? We are not going to try those other cases.

5 MR. BAKHTIARI: No, Your Honor. We are not trying,
6 definitely. The counts that I have pleaded guilty to is
7 attempting to obstruct a civil suit. That is the docket of
8 that civil suit.

9 THE COURT: Well, but how is it relevant to this,
10 sir? That's going to be dismissed in this case today. That
11 has been agreed to be dismissed.

12 MR. BAKHTIARI: That's Count 1.

13 THE COURT: Uh-huh.

14 MR. BAKHTIARI: The Count 2 that I have pleaded
15 guilty to is attempting to obstruct a judicial proceeding
16 which is ongoing, which is this civil suit. And I would
17 assume that is relevant because that is the core of the count
18 that I have pleaded guilty to, which is obstruction of justice
19 and attempting to obstruct a civil suit.

20 THE COURT: Wait a minute. Let me see here. On
21 paragraph 28: The defendant willfully obstructed or impeded
22 or attempted to obstruct or impede the administration of
23 justice with respect to the investigation, prosecution, or
24 sentencing of the instant offense of conviction, and the
25 obstructive conduct related to the defendant's offense of

1 conviction and any relevant conduct or a closely related
2 offense. Therefore, two levels are added.

3 Now, tell me, before we get into this, how you
4 believe going into this civil case will have any bearing on
5 obstruction of justice.

6 MR. BAKHTIARI: Your Honor, we are actually on the
7 eight-level enhancement at this time. And in conjunction with
8 pleading guilty to 18 U.S.C. 1512, the Government has
9 requested for an eight-level enhancement for using threat in
10 conjunction with some other conduct to obstruct justice.

11 Now, the obstruction of justice is centered on this
12 civil suit, and the allegation is that I have used violent
13 threat to hinder this civil suit, which is the content of this
14 exhibit which is before you right now, Your Honor.

15 THE COURT: Mr. Sauer.

16 MR. SAUER: If I may, Your Honor, I believe there are
17 two kinds of obstruction of justice. There is the obstruction
18 of justice which he's pled guilty to, which is sending a
19 threatening email in an attempt to derail or affect
20 proceedings in this suit, and then there's the subsequent
21 obstruction of justice for actions he's taken since his
22 indictment and since his plea agreement.

23 This civil docket, which the Court can easily take
24 judicial notice of as I see, is the civil docket in the civil
25 case which he has -- which he's pled guilty to attempting to

1 obstructions justice. And I believe the tenor of the questioning
2 on the basis of this document would be Mr. Bakhtiari's attempt
3 to argue that he did not, in fact, send the email and attempt
4 to influence these proceedings.

5 And my objection to that is different than relevance.
6 It's that he's admitted under oath in the plea agreement that
7 he did cause that email to be sent in an attempt to influence
8 those proceedings. So I don't know how this is relevant to
9 the enhancements that are at issue here.

10 It seems to be relevant to -- it seems to be
11 relevant, if anything, to my claim that he is not entitled to
12 acceptance of responsibility because he's claiming that what
13 he said under oath in August, when we did the plea proceeding,
14 wasn't in fact true.

15 THE COURT: Okay. Well, let's see where it goes. Go
16 ahead.

17 MR. BAKHTIARI: Just a matter of clarification, Your
18 Honor. One of the evils in this is that Mr. Sauer rushed
19 through drafting his plea agreement and he's called --
20 defendant caused the email to be sent. That is very vague.
21 It doesn't specify any conduct. And now, at the time of
22 calculation of the guidelines and also going through the
23 sentencing factors, Mr. Sauer is attempting to broaden the
24 range of what "causing be sent" encompasses.

25 Now, those words that I pleaded guilty to, they mean

1 specific things. I've never in that document pleaded and
2 accepted to sending or causing or authoring the email.

3 Somehow contributing to it as a minor contributor, that's what
4 the document reflects, and that is what the sentencing should
5 be centered on.

6 Now, if I may, I will proceed with this with just a
7 couple of questions on the civil suit, and then we can just
8 completely move on from it.

9 THE COURT: How can this witness shed any light on
10 that?

11 MR. BAKHTIARI: Well, this witness is on the stand to
12 speak to the eight-level enhancement as far as use of violent
13 threats. And Mr. Sauer in his objection kind of oozed into
14 the plus-two and plus-three enhancements that, you know, they
15 are yet to come up. We are not addressing those right now.

16 THE COURT: I know. But how is this witness going to
17 give any testimony that's relevant to any of these issues?

18 MR. BAKHTIARI: Well, this witness is the primary
19 witness who is going to be providing facts to the Government
20 for their allegation that would support the eight-level
21 enhancement. I would believe that's why they have put Mr.
22 Hiles up here.

23 THE COURT: Well, I quite honestly don't understand,
24 but just because that may be a flaw on my part, I'm going to
25 let you go ahead and ask the question.

1 Q (BY MR. BAKHTIARI) Thank you, Your Honor.

2 Mr. Hiles, on that docket which is in front of you,
3 the civil suit in question, may I ask you to take a look at --
4 I will continue in a moment. Let me find it. May I ask you
5 to look at Docket No. 17?

6 A Yes.

7 Q Is that a memorandum for motion to dismiss by Mr. Devine?

8 A It is.

9 Q Did Mr. Devine dismiss his counts? Was that granted,
10 that motion?

11 A Mr. Devine did not dismiss it, but my recollection is
12 that Judge Limbaugh dismissed the count against Patricia
13 Leader Frank at about the same time he dismissed the count
14 against Carl Peterson, which was filed pursuant to my motion.

15 Q That is correct. Did Mr. Devine receive any threats, to
16 your knowledge?

17 A I don't know if he received any threats from you or not.

18 Q Great. Now, may I ask you to move on to -- move on to --
19 may I ask you to move on to Docket No. 41?

20 A Yes.

21 Q Is that your expedited civil discovery motion?

22 A I believe that it is, yes.

23 Q And you filed that?

24 A I did. I believe I filed every pleading on behalf of the
25 defendant group, Missouri College and Carl Peterson. I was

1 lead counsel for that group.

2 Q Did you -- did that motion have numerous exhibits to it?

3 MR. SAUER: Object to the relevance.

4 THE COURT: Yeah. I don't know why, but, okay,
5 overruled. I will hear the question -- hear the answer.

6 Overruled.

7 A Actually, the memo in support of that motion had a
8 variety of exhibits, yes.

9 Q It was voluminous?

10 A I don't know how voluminous it was. According to
11 Pleading No. 43, it contained Exhibits 1 through 15.

12 Q Now, right after that motion, did you receive any
13 threats?

14 A Not right after that motion, no.

15 Q Thank you. May I ask you to go up --

16 THE COURT: Okay. That's enough. That's enough.
17 Move on. No more of this.

18 MR. BAKHTIARI: Yes, Your Honor. Sure. Moving on to
19 the other exhibit.

20 THE COURT: Wait a minute. What's the other exhibit?

21 MR. BAKHTIARI: The other exhibit, Your Honor, is
22 three other suits that I had filed in this court that lasted
23 about five years of litigation, and none of those attorneys
24 received any threats.

25 THE COURT: All right. I'm going to -- can I just

1 take notice that in the other five cases you haven't received
2 any threats?

3 MR. BAKHTIARI: It was not this gentleman. We
4 litigated against University of Missouri, a heavy litigation,
5 for about five years.

6 THE COURT: The objection is sustained. That has no
7 relevance to this case.

8 MR. BAKHTIARI: Yes, Your Honor. May I have that
9 back? You can hold onto it. Okay. Exhibit 8.

10 THE COURT: What's this?

11 MR. BAKHTIARI: This is a motion -- this is a motion
12 for sanction before -- in this district court that was filed
13 by an opposing counsel. I responded to without posing any
14 threats to any individual.

15 THE COURT: See, you know, I don't care. I don't
16 care. I don't care if you have not threatened anybody else.
17 I don't care.

18 MR. BAKHTIARI: Yes, Your Honor.

19 THE COURT: I'm not going to hear this.

20 MR. BAKHTIARI: Yes, Your Honor.

21 THE COURT: The issue is whether you've threatened
22 this witness, not whether you threatened somebody else, didn't
23 threaten somebody else. Has nothing to do with what's going
24 on here.

25 MR. BAKHTIARI: Yes, Your Honor.

1 THE COURT: It's like what I tried to get across to
2 you when we started. I've seen so many people like you that
3 come in here and fashion some kind of a case that's totally
4 irrelevant, and you end up hurting yourself.

5 MR. BAKHTIARI: Yes, Your Honor.

6 THE COURT: This is totally irrelevant, and I'm just
7 not going to hear it.

8 MR. BAKHTIARI: Yes, Your Honor. May we proceed?

9 THE COURT: Well, it depends. What are you going to
10 do next?

11 MR. BAKHTIARI: We are out of the other civil docket
12 suits right now, and we are just simply focusing on the
13 interaction that we had personally together.

14 THE COURT: All right. That very well could be
15 relevant.

16 Q (BY MR. BAKHTIARI) Mr. Hiles, who is that letter to?

17 A It purports to be a letter to Jeff Ayers.

18 Q Who is Mr. Ayers?

19 A He was at the time, and is today, the general counsel of
20 Career Education Corporation.

21 Q May I ask you to go to the last paragraph, which is the
22 second page of that letter, please? It starts with "I do not
23 believe there is any liability."

24 A Do you have a question?

25 Q May I ask you to read that out loud for the record?

1 A "I do not believe there is any liability upon Missouri
2 College and CEC for this issue. Students hear the word of
3 mouth and follow leads and look for jobs, but since I have
4 received at least twenty calls inquiring about masseuse jobs
5 in Vegas from Missouri College students, I think it would be
6 proper for your office to make sure such misunderstanding and
7 misconception is not being disseminated among your students by
8 teachers or any possible posting on your physical or
9 electronic domains and premises."

10 Q Is this demanding any settlement from your client?

11 A This is the beginning of a contrived scheme by you to
12 file a lawsuit against my clients, which you ultimately filed.
13 It is my belief that your lawsuit was based upon false and
14 phony email messages that you created that support or
15 supported your eventual claim that you were pimping girls in
16 the Las Vegas masseuse industry and that that led to your
17 creation of a letter on Missouri College letterhead, not
18 signed by anyone at Missouri College, letterhead only used at
19 the time when you were on the faculty and not used for months
20 thereafter or at the time the letter was sent or even now, and
21 that you created that letter to send to St. Louis media
22 outlets so you would gin up a defamation lawsuit against
23 Career Education Corporation and Missouri College.

24 Q May I ask you to look at the first page, please? What's
25 the date on that letter?

1 A March 19, 2010.

2 Q And when was the lawsuit filed in 2010? Was that
3 October, by any chance?

4 A I don't know. What does it matter?

5 Q Specifically to that email, is that posing threats to
6 anybody or you?

7 MR. SAUER: Objection, irrelevant, beyond the scope
8 of direct, and I would say asked and answered.

9 THE COURT: Sustained.

10 MR. BAKHTIARI: Yes, Your Honor. We will move on.

11 THE COURT: Go ahead.

12 Q (BY MR. BAKHTIARI) Is that an answer to your discovery
13 requests in the civil suit?

14 A Give me a moment. I'm unable to say that it is. It's
15 not been signed by the plaintiff, and it has not been
16 notarized. I don't know if this is an answer to discovery.

17 Q Did you -- in your law firm, in your evidence room, did
18 you receive, by any chance, a computer and an external hard
19 drive in answer to discovery request?

20 A I received a broken and tampered-with computer and a
21 broken and tampered-with hard drive that you surreptitiously
22 delivered to my law firm three hours before you told me that
23 someone else would deliver it and about forty-five minutes
24 after you told me that you were north of Chicago.

25 Q Did you get a computer and external hard drive?

1 A Depends on your definition of "computer." If it involves
2 a functioning computer and a functioning hard drive, the
3 answer is no.

4 Q Was that computer and hard drive delivered into your mail
5 room in Husch Blackwell's building?

6 A Yes.

7 Q Is that a secured room or anybody can just walk in?

8 A Anybody can walk in when they bum-foozle one of our
9 clerks, one of our document clerks, by saying that you're
10 there to meet with one of my colleagues, which is what you did
11 that day, and she used her pass-card to let you in.

12 Q So your staff members let anybody into that evidence
13 room?

14 Yes, Your Honor, I will proceed. I will proceed. I
15 realize that.

16 Mr. Hiles, may I ask you to take a look at the
17 content of that discovery answer?

18 A Mr. Bakhtiari, just to make it clear, I'm not agreeing
19 that this is a discovery answer.

20 Q Yes.

21 MR. SAUER: Judge, I'm going to object to questions
22 to a document that has --

23 THE COURT: Yeah. No relevance, sustained.

24 MR. BAKHTIARI: Yes, Your Honor. I will proceed, if
25 I may, to Exhibit No. 11. This is the last exhibit, Your

1 Honor.

2 THE COURT: All right.

3 Q (BY MR. BAKHTIARI) Thank you. What is that
4 correspondence, Mr. Hiles?

5 A This is a letter from my partner, Max Carr-Howard, to
6 Robert Livergood, the Assistant U.S. Attorney, one of the
7 Assistant U.S. Attorneys here in St. Louis.

8 Q And are you aware why that correspondence was made to the
9 U.S. Attorney's office?

10 A Yes.

11 Q May I ask you why?

12 A Yes. My client had received a CD from you which we
13 suspected contained pornographic material based upon some
14 contentions you had made about its content. In particular,
15 there was a contention about a woman with a nude photo of her
16 child and one of this woman grinding her two-year-old son. So
17 we submitted the CD or DVD, I'm not sure which it was,
18 apparently it was a CD, to the U.S. Attorney's office to ask
19 them to open it and to view its contents so that there would
20 not be any allegations of impropriety on your part that my
21 client had tampered with the CD because you were known to us
22 to be a person suspected of tampering with emails, with
23 letters, with photographs, and with other electronic -- or
24 through the use of electronic media altering photographs.

25 Q Is that fair to say that that is simply your allegation

1 at this juncture?

2 A It's my absolute belief, sir.

3 Q Okay. Now, may I ask you to proceed to the second or
4 third page? It starts with "Dear Mr. Ayers."

5 A You're talking about another letter now that was included
6 in this document.

7 Q May I simply just ask you, just the first paragraph would
8 do. May I ask you to read that for me, for the record,
9 please?

10 A "I reluctantly have filed another suit against your
11 subsidiary, Missouri College. Upon filing my previous suit in
12 2010, I urged you to allow us conduct a thorough discovery to
13 identify the causes of the issues, but through your counsel
14 you flooded the court with your pleas of an early resolution
15 as it appears you merely tossed the matters under the carpet."

16 MR. SAUER: I object to any further questions on this
17 document as irrelevant and beyond the scope of the direct
18 examination, and also, I now believe that he's trying to put
19 in his own prior hearsay statements without testing them by
20 cross-examination.

21 THE COURT: Well, you know, it does again seem to me
22 to be totally irrelevant, but I could be missing something.
23 What's your claim that that has any relevance to this case?

24 MR. BAKHTIARI: Your Honor, Mr. Hiles and Mr. Sauer
25 have been in conjunction portraying to this Court and even

1 asserting clearly that I have been soliciting nuisance
2 settlements from his clients. This is the letter to the
3 general counsel which is asking for a thorough discovery.

4 Nowhere in this letter is asking for a dime of settlement.

5 Now, Mr. Hiles has mentioned it in his statements
6 while he's been on the stand, so has Mr. Sauer on his records,
7 that we have violently and forcefully tried -- or I have
8 violently and forcefully tried to influence a civil suit.
9 Why? So I could get nuisance settlements out of that civil
10 suit.

11 The record is showing clearly that I have been
12 advocating and forcefully requesting a thorough discovery, and
13 nowhere on any of these documents is mentioned any settlement
14 proposals or any settlement demands, and it's just speaking to
15 the underlying premise of this whole allegation.

16 THE COURT: All right.

17 MR. SAUER: I renew my objection on the grounds of
18 relevance and beyond the scope and the fact that he's trying
19 to put in his own prior self-serving hearsay statements for
20 the truth of the matter asserted, which have limited or no
21 evidentiary value.

22 MR. BAKHTIARI: I have only two more questions for
23 Mr. Hiles, with no exhibits, and then I'll be done with this
24 witness, Your Honor.

25 MR. SAUER: I don't object to that, Your Honor.

1 THE COURT: All right. Go ahead.

2 MR. BAKHTIARI: I'm glad you're happy, sir.

3 THE COURT: Wait. Don't, please. Stay focused. I
4 believe this is totally irrelevant, but again, there could be
5 something I do not understand, and I will overrule it. Go
6 ahead.

7 Q (BY MR. BAKHTIARI) Mr. Hiles, has Mr. Sauer applied for
8 any job with Husch Blackwell before at any time?

9 A Not to my knowledge.

10 Q Has he spoken to you or any of your colleagues about
11 possibly obtaining a position with the private firm of Husch
12 Blackwell or associated firms?

13 A He has certainly not spoken to me about that.

14 Q Are you a --

15 THE COURT: That's two. What's the third one?

16 Q Well, are you a partner in that firm?

17 A Yes.

18 Q How many years have you been with that firm?

19 THE COURT: Thirty-one, I think he said.

20 THE WITNESS: Thirty-two, actually.

21 THE COURT: All right.

22 MR. BAKHTIARI: Great. Your Honor, I have no further
23 questions for Mr. Hiles.

24 THE COURT: Any redirect?

25 MR. SAUER: No, Your Honor.

THE COURT: You may step down. You are excused.

2 || Thank you.

3 THE WITNESS: Shall I leave the exhibits?

4 THE COURT: Would you deliver them back to your
5 counsel, and he can give them back to the defendant.

6 You may call your next witness.

7 MR. SAUER: The Government calls Glenn Fogarty.

8 Judge, I'm being told by Mr. Bakhtiari that he has a
9 witness present who has a conflict coming up. He would like
10 to call that witness out of order before the conclusion of the
11 Government's witnesses.

12 THE COURT: All right.

13 MR. SAUER: I'm not sure who the witness is, but I
14 don't object.

15 THE COURT: All right.

16 MR. BAKHTIARI: Attorney Hoekel practices law and is
17 a member of the bar in this court and also other courts, and
18 he has a pressing schedule today. May I depose him so he can
19 leave?

20 THE COURT: You do not depose him. You may inquire
21 of him.

22 MR. BAKHTIARI: Yes, Your Honor, if I may.

23 THE COURT: All right.

24 || (WITNESS SWORN BY THE CLERK.)

THE COURT: You may inquire.

1 **MARSHALL R. HOEKEL,**

2 **HAVING BEEN FIRST DULY SWORN, WAS EXAMINED AND TESTIFIED AS**
3 **FOLLOWS:**

4 **DIRECT EXAMINATION**

5 **BY MR. BAKHTIARI:**

6 Q Thank you, Mr. Hoekel. Good morning to you.

7 A Good morning.

8 Q When was the first time when you and I met?

9 A Was it 2004?

10 Q Would that be fair to say was it in March of 2005, by any
11 chance?

12 A That sounds right.

13 Q And what was the purpose of our initial meeting?

14 A Were you in deportation proceedings at the time, or did
15 we meet about your civil case against the University of
16 Missouri?

17 Q Do you recall if we met about a pair of civil suits
18 against University of Missouri?

19 A That would be one reason that we met, yes.

20 Q And did you represent me in these cases?

21 A Yes.

22 THE COURT: You have what, two Exhibit 1's? Oh,
23 that's okay. We'll call this Exhibit 11. How's that?

24 Q Mr. Hoekel, were there a conglomerate of cases against
25 University of Missouri that went on for about five years?

1 A Yes.

2 Q The first item on that list, is that a case before Judge
3 Fleissig?

4 A Yes.

5 Q Did you represent me in that case?

6 A Did I -- I don't remember if I entered on that case or
7 not.

8 Q Was that --

9 A I represented you in the series of cases, but probably.

10 Q Was that case later on dismissed on summary judgment
11 filed by Mr. Hoskins of University of Missouri?

12 A Yes.

13 Q Would that be fair to say we put hundreds of hours on
14 that case?

15 A It was a lot of time. It was.

16 Q Was that case dismissed on summary judgment based on a
17 motion filed by Mr. Hoskins?

18 A I believe so.

19 Q Did Mr. Hoskins or any of his colleagues claim to have
20 received any kind of threats because of that summary judgment
21 motion?

22 A No.

23 Q May I ask you to look at the second item? Is that a case
24 before Honorable Carol Jackson of this district court?

25 A Yes.

1 Q Did you represent me in that case?

2 A Yes.

3 Q Did we put hundreds of hours in that case possibly?

4 A Yes.

5 Q Was that case dismissed on summary judgment?

6 A Yes.

7 Q Did Mr. -- did the attorneys involved in that case, being
8 Mr. Hoskins or Mr. Hawke, either of them received any threat
9 after filing a summary judgment?

10 A No.

11 Q That you know of?

12 A Correct.

13 Q May I ask you to look at the third item? Is that a case
14 before Judge Medler?

15 A Yes.

16 Q Are these three cases related University of Missouri
17 cases?

18 A Yes.

19 Q Did you represent me before Judge Medler?

20 A I don't think I did.

21 Q Was I pro se before Judge Medler?

22 A I believe so.

23 Q Was that case dismissed or resolved before Judge Meddler?

24 A I don't know.

25 Q Do you recall that we had a one-day-long mediation with

1 University of Missouri in 2005 with Honorable Carl Gaertner as
2 the mediator?

3 A Yes.

4 Q Did we settle that case?

5 A Not at that time.

6 Q So we -- was that be fair to say that it was a
7 one-day-long mediation and we could not settle it?

8 A I believe so.

9 Q Is that fair to say that we revisited the same issue in
10 summer of 2008 with Mediator Mike Geigerman?

11 A Yes.

12 Q Is that fair to say it went on for several days this
13 time?

14 A It went on for at least one -- well, yes. In total, yes.

15 Q Was that resolved at the end, after that one-month
16 mediation with Mike Geigerman?

17 A No.

18 Q Do you recall after either of these long mediations if
19 the mediator or either of the witnesses or either of the
20 attorneys involved received any threats?

21 A I do not recall they received any threats.

22 MR. BAKHTIARI: Thank you. Your Honor, I have
23 Exhibit No. 2 for this witness, just two exhibits for him.

24 THE COURT: Well, are we going to ask if he made --
25 you made threats to anybody else, because if you are --

1 MR. BAKHTIARI: No, Your Honor.

2 THE COURT: Because if he did, it's not relevant to
3 this case.

4 MR. BAKHTIARI: Yes, Your Honor. And that's probably
5 the end of, you know, other possible witness questions that
6 has been annoying the Court, and I apologize about that.

7 THE COURT: Well, I just want to make sure -- it's
8 not annoying me. I have a responsibility to make rulings
9 based on what I hear, and what I've heard so far is the fact
10 that you have made -- not made threats to anybody else is not
11 relevant to this case.

12 MR. BAKHTIARI: Yes, Your Honor.

13 THE COURT: And it's not relevant.

14 MR. BAKHTIARI: The premise here, Your Honor, being
15 that a five-year-long litigation, which has been taking about
16 a thousand hours, did not promote a violent threat. How could
17 a simple run-of-the-mill sanction motion push this individual
18 to go pull out a gun and threaten an innocent family? That's
19 basically the thought and the rationale behind these lines of
20 question.

21 Q (BY MR. BAKHTIARI) Mr. Hoekel, may I ask you to read that
22 news article for the Court? And I'm sorry if it's had a bad
23 print. Thank you, Mr. Hoekel.

24 A Okay.

25 Q May I ask you to read this aloud for the Court?

1 A You want me to read the entire --

2 Q If you would, kindly.

3 A All right. "Since he left MST, Missouri Science and
4 Tech, in 2004, Alireza Bakhtiari, an Iranian national and grad
5 student invitee to the MST, filed at least four lawsuits in
6 Missouri state and federal courts against the university and
7 former Dean Lutz, as an individual defendant --

8 MR. SAUER: I'm going to object to the reading of
9 this document.

10 THE COURT: Yeah, I can read it. I can read it.

11 Just give me a second. I'll read it. Just a second. Okay.
12 I have read it.

13 Q Thank you, Your Honor.

14 Mr. Hoekel, does that sound right, the number of
15 lawsuits that I filed against University of Missouri in pro se
16 or through counsel?

17 MR. SAUER: Judge, I now would like to interpose an
18 objection to the admissibility of this document. The source
19 for the allegations in this article, as I understand it, was
20 Mr. Bakhtiari himself speaking to reporters; so it is
21 self-serving hearsay.

22 Further, what's not being presented to the Court is
23 the fact that this newspaper later presented a retraction of
24 allegations in this article. Therefore, there are no
25 additional reliability to whatever is stated in this article

1 that's before the Court.

2 Also, I further renew my objections on the grounds of
3 relevance.

4 THE COURT: All right. Well, I believe I could well
5 sustain those objections, but I will overrule it at this time.
6 Go ahead.

7 MR. BAKHTIARI: Thank you, Your Honor. And the
8 reality of it is that is a press -- official press release by
9 University of Missouri.

10 THE COURT: Just ask the question.

11 Q (BY MR. BAKHTIARI) Mr. Hoekel, does that sound about
12 right, the number of lawsuits filed in pro se and through
13 counsel, to the best of your memory?

14 A I don't believe there were -- I don't believe there were
15 any lawsuits in state court that I was aware of, and I think
16 that the lawsuits in the federal court in this district were
17 the ones that you presented to me in Exhibit 1.

18 Q Do you recall --

19 A Which would be three lawsuits.

20 Q Did we have, by any chance, a defamation suit before
21 Judge Dierker in the City of St. Louis Circuit Court?

22 A Now that you mention it, yes.

23 Q Was that case later on moved to the Rolla Circuit Court
24 and then to federal court?

25 A That sounds correct.

1 Q Do you recall if at the end of those suits the matters
2 were globally settled by University of Missouri?

3 A I wasn't involved after the mediation with Mike
4 Geigerman, so I don't know whether they were ultimately
5 settled or not.

6 Q Were you informed if, as a result of those lawsuits, the
7 dean was terminated and the university restructured?

8 A I don't know that.

9 Q Thank you. Mr. Hoekel, throughout those cases that you
10 and I litigated together, did I assist in the legal research?

11 A Yes.

12 Q Was I actively involved in the preparation of the motions
13 and the briefs to the court?

14 A Absolutely.

15 Q Mr. Hoekel, with utmost frankness to the Court, in your
16 perspective, in your perception, am I a litigious man?

17 A Well, if you count the number of lawsuits that you file,
18 you filed your share, which, of course, you know, but I don't
19 believe that --

20 Q Is that yes or no, litigious?

21 A I suppose so, yes.

22 Q Do you think, based on five years or seven years of
23 knowledge, am I a violent man?

24 A No.

25 MR. SAUER: Objection. Calls for a --

1 MR. BAKHTIARI: Your Honor, he answered.

2 THE COURT: He's already answered.

3 Q (BY MR. BAKHTIARI) He's already answered.

4 What did you say the answer --

5 A I said no.

6 Q Did we depose about thirty faculty and students of
7 University of Missouri together?

8 MR. SAUER: I will object.

9 THE COURT: Sustained. Sustained.

10 Q Yes, Your Honor, I will proceed.

11 Do you recall -- were you aware of my service to St.
12 Louis County Police as a cyber forensics expert?

13 MR. SAUER: Objection to the leading form. Objection
14 to the relevance.

15 THE COURT: Overruled.

16 A I believe I knew something about that.

17 Q Was it somewhat true that I was a volunteer cyber
18 forensics expert for St. Louis Police?

19 MR. SAUER: Objection, lack of foundation. His only
20 basis for it would be hearsay.

21 THE COURT: It calls for his knowledge. Overruled.

22 A I believe so.

23 Q Did you see news clips about those works on TV?

24 A Yes.

25 Q Did you represent me in a civil suit car accident a few

1 months ago?

2 A Yes.

3 Q Did we have a video deposition with the opposing counsel
4 in that suit?

5 A I think there were two.

6 Q Was I -- did I become antagonistic and hardheaded against
7 the opposing counsel, based on your perception and knowledge?

8 A No.

9 Q Did the counsel turn around and say I had threatened them
10 before or after the suit?

11 A No.

12 MR. BAKHTIARI: Thank you. No further questions for
13 Mr. Hoekel, Your Honor.

14 THE COURT: Any questions?

15 MR. SAUER: No, Your Honor.

16 THE COURT: You may step down. You are excused.

17 Thank you.

18 MR. SAUER: Your Honor, Government calls Glennon
19 Fogarty.

20 THE COURT: Okay.

21 MR. SAUER: Judge, if I may, I also at this time
22 would like to invoke the rule. There are persons present in
23 the courtroom. I don't know who they are. They may be
24 witnesses that Mr. Bakhtiari plans to call. I wasn't notified
25 that they might be witnesses, but to the extent that anyone

1 present in the courtroom plans to testify as a witness, I'd
2 ask that they be excluded.

3 THE COURT: Okay. He said he had two. Do you have
4 one more witness?

5 MR. BAKHTIARI: Your Honor, we notified Mr. Sauer --
6 or at least it is to my knowledge that Attorney Smith notified
7 Mr. Sauer that we intend to call Mr. Hoekel, Mr. Salazar, and
8 Ms. Sharon Weiss as witnesses.

9 THE COURT: Okay. If they're in the courtroom,
10 they'll need to excuse themselves at this time.

11 MR. BAKHTIARI: Your Honor, Mr. Salazar and Ms. Weiss
12 are the fact witnesses, and I intend to call upon them now.

13 THE COURT: Okay.

14 MR. BAKHTIARI: Whatever the Court directs them, I'm
15 sure -- do you need them to leave?

16 THE COURT: No. They just need to be outside the
17 courtroom.

18 MR. BAKHTIARI: Oh.

19 **(WITNESS SWORN BY THE CLERK.)**

20 THE COURT: You may inquire.

21 MR. SAUER: Thank you, Your Honor.

22 **GLENNON FOGARTY,**
23 **HAVING BEEN FIRST DULY SWORN, WAS EXAMINED AND TESTIFIED AS**
24 **FOLLOWS:**

25 **DIRECT EXAMINATION**

1 BY MR. SAUER:

2 Q Please state your name.

3 A Glennon Fogarty.

4 Q What is your occupation?

5 A I'm an attorney.

6 Q And where do you work?

7 A Husch Blackwell.

8 Q Have you been involved in a litigation involving a
9 client, Missouri College, and a pro se litigant, Alireza
10 Bakhtiari?

11 A Yes, I have.

12 Q And have you been -- have you worked in connection with
13 Mr. Brad Hiles on that litigation?

14 A Correct. Mr. Hiles is the lead counsel in the case.

15 Q And you assist him in the -- have you assisted him in
16 that representation?

17 A Yes, I have.

18 Q Directing your attention to Martin Luther King day of
19 this year, Monday, January 16, 2012, did you receive
20 information from Mr. Hiles on that day?

21 A Yes. It was a very memorable call. I received a call
22 early in the morning on that holiday, Monday morning, and Brad
23 was very serious and very gravely concerned.

24 Q And did he advise that he received an email that caused
25 him concern?

1 A Yes, he did.

2 Q And did he describe that email to you?

3 A He did.

4 Q Did you later review the contents of that email?

5 A I did.

6 Q On that day, January 16, 2012, did you take any steps to
7 put Mr. Hiles in contact with law enforcement?

8 A Yes, I did.

9 Q What were those steps?

10 A We contacted Mr. Jim Crowe, who is the chief of the
11 criminal division of the U.S. Attorney's office.

12 Q Did you request that a federal investigation be commenced
13 relative to that email?

14 A Mr. Hiles did, I believe, yes.

15 Q And to your knowledge, was a federal investigation
16 commenced?

17 A Yes.

18 Q I want to direct your attention to two days later,
19 Wednesday of the same week, January 18 of 2012. On that day
20 did you have occasion to travel to Mr. Bakhtiari's residence?

21 A I did.

22 Q What was the purpose of your visit?

23 A Judge Limbaugh had entered an order which required, among
24 other things, Mr. Bakhtiari to allow for an inspection, entry
25 into his house, slash, office, and inspection of all computers

1 and electronic storage devices.

2 Q Was that house located at 3889 Walsh in the city of St.
3 Louis?

4 A That's correct.

5 Q When you arrived at that house that day, did you enter
6 the home?

7 A I did.

8 Q And did you attempt to inspect computer equipment?

9 A Yes.

10 Q What kinds of equipment were you directed or authorized
11 to inspect and examine pursuant to the terms of the order?

12 A The order specified -- I don't have it in front of me,
13 but I know the order specified computers and all electronic
14 storage devices, so that would have included anything that
15 would have stored electronic data.

16 Q Did you make attempts to locate computers and electronic
17 storage devices in the home?

18 A Yes.

19 Q Did you locate any?

20 A And just to clarify the record, I was there with a
21 consultant, and there was a court reporter. And we did locate
22 four shelves of what I would call computers, but none of them
23 had hard drives.

24 Q Did there come a point during the course of this visit
25 where Mr. Bakhtiari drew you into a bedroom?

1 A Yes. I had -- in addition to asking for the production
2 and inspection of computers, we had also asked for cameras
3 because cameras are electronic storage devices, and there are
4 photographs that are at issue in that matter and that were the
5 basis of motions of sanction. So we were asking -- I was, in
6 fact, asking him to produce all computers and cameras for
7 inspection, and he said -- I asked him if there were any more
8 cameras, and he said no. And then he said, "Well, I remember
9 I have another camera I need to show you." And he asked me to
10 follow him, and I did.

11 Q And where did you go when you followed him?

12 A He took me to his bedroom and then reached underneath his
13 bed and pulled out a loaded rifle with a scope on it and
14 said --

15 Q Go ahead. What did he say?

16 A He said, "Do you want to look through the scope? It has
17 cross hairs."

18 And I said, "Is that a camera?"

19 And he said, "Do you want to look through it?"

20 And I said, "Does it record?"

21 And he said, "Do you want to look through it?"

22 And I said, "If it's not an electronic storage
23 device, I don't need to see it."

24 Q At the time he displayed -- how did you know the firearm
25 was loaded?

1 A So when I got into the room, I didn't initially know it
2 was loaded, but then right near at the end of that
3 conversation, he did what I would describe as a bolt action,
4 and pulled out a bullet and looked at me and extended his arm
5 and said, "Do you want a bullet?"

6 And I said, "I don't need a bullet. Please put it
7 away."

8 And then he put the bullet back in the gun, did the
9 bolt action again.

10 Q And did he place the gun anywhere?

11 A Then he placed the gun underneath the bed. And I backed
12 out of the room so I could watch him as he walked towards me.
13 Then he walked past me in the adjoining room, and then I
14 followed him to the next place.

15 Q At the time that you observed him with that weapon, had
16 you had a chance to view the email with the cross hairs on the
17 wedding photographs that Mr. Hiles had received three days
18 earlier?

19 A Yes. I had -- this particular right of entry and
20 inspection happened on January 18, and I had seen the email
21 sent to Mr. Hiles on January 16, two days before.

22 Q Did you ask -- in the course of your visit to his home,
23 did you at any time ask him to display any weapons to you?

24 A I did not.

25 Q Did you ask him if he had any scopes or anything like

1 that?

2 A I did not.

3 Q Did he indicate to you that he believed that this scope
4 on this rifle had recording capacities of some kind?

5 A Could you repeat that?

6 Q Did he indicate whether or not he believed that that
7 scope could actually record, it could actually function as a
8 camera?

9 A He -- so during that encounter he was characterizing the
10 scope as a camera, and I was inquiring of him, "Does it
11 record?" And it seemed to me that he was using that exchange
12 to use the word "cross hairs" to me. But at that time he
13 never indicated it was recorded.

14 Later on, at the -- near the conclusion of the
15 inspection, we made a record on the -- and Mr. Bakhtiari was
16 under oath and made a record, and during that record Mr.
17 Bakhtiari, I think, may have made the attempt to try and say
18 "certain scopes record," but I don't recall whether he did or
19 didn't. But he clearly acknowledged that the scope on the
20 rifle that he displayed to me didn't -- that that one did not
21 record.

22 Q When you made a record, was that record transcribed?

23 A It was.

24 Q In the course of that record did he continue to use the
25 words "cross hairs" or "cross hair"?

1 A He used the word "cross hairs" both in the bedroom, when
2 he initially displayed the gun, and then he used the word
3 "cross hairs" during the recorded examination.

4 Q How did you react to -- or what message, if any, did you
5 perceive in his display of this rifle for you, his use of the
6 word "cross hairs," and his displaying of the bullet in the
7 rifle chamber?

8 A I would say I had at least three immediate reactions.
9 The fist one was obviously concern about there being a loaded
10 rifle involved in this entry and inspection, and then doing
11 the bolt action and showing that it's loaded and extending the
12 bullet obviously gave me potential concern about there being a
13 loaded rifle in the premises, but when he used the word "cross
14 hairs," it immediately struck me that he was trying to -- at
15 least I believe he was trying to put in my mind the email that
16 had been sent to Mr. Hiles.

17 And I guess I say that in two respects. I believe
18 that he was trying to send the message that he knew of or he
19 had sent that email and that he had the ability to fulfill the
20 threat in there, in my opinion.

21 Q Did you personally experience fear on that day?

22 A Definitely.

23 Q And have you continued to experience fear as a result of
24 both the email and this display of the rifle?

25 A I have.

1 Q Have you experienced fear for your family as well?

2 A Yes, I have.

3 Q And have you taken certain steps to ensure your family's
4 safety?

5 A That's correct. We no longer answer the door until we
6 know who is at the front door. And, for example, on Halloween
7 this year, we weren't open for Halloween because people come
8 to the door in masks and you don't know who they are.

9 MR. SAUER: No further questions, Your Honor.

10 THE COURT: You may inquire.

11 **CROSS-EXAMINATION**

12 **BY MR. BAKHTIARI:**

13 Q Good morning, Mr. Fogarty. Mr. Fogarty, the exhibit
14 which is before you or in front of you, is that the order that
15 Honorable Limbaugh issued authorizing you to collect any
16 digital storage media from my house?

17 A Okay. Exhibit 1 does appear to be one of the orders
18 issued by a Judge Limbaugh, and it does direct that plaintiff,
19 which was Mr. Alireza Bakhtiari, shall produce all computers
20 and all electronic storage devices that plaintiff has utilized
21 during the time period of January 1, 2009, to present, for
22 inspection and forensic imaging, yes.

23 Q Mr. Fogarty, did you, on January 18, morning, on 9 AM,
24 appear at my house with a court reporter and a consultant in
25 order to execute that order?

1 A I did.

2 Q Did you stay in the house until late hours in the
3 afternoon, until about 5 PM, with your court reporter and your
4 consultant?

5 A I don't know the time we left. It was in the afternoon.

6 Q Late in the afternoon; is that fair to say?

7 A The transcript might reflect that, but what time we left,
8 I don't recall the specific time. I would say it was in the
9 afternoon.

10 Q Did you collect some items from my residence?

11 A The consultant did collect items, yes.

12 Q Do you recall what they were?

13 A I don't have a list of them with me.

14 Q Mr. Fogarty, can I ask you to, as quickly as you can,
15 skim through that article, and then if you could, please,
16 explain to me what is that article reflecting?

17 A This article reflects, I guess, certain shooters want to
18 try and photo or video an animal you chose not to shoot and
19 show your friends. And it allows shooters to video their
20 rifle hunt.

21 Q Is that a scope on the -- which is placed on the rifle?

22 A This appears to be a scope that does record.

23 Q Is that a flash drive that you -- that goes on the side
24 of that scope in order to store digital information? Do you
25 see that?

1 A I do see a fixture depicting a point where you can put a
2 flash drive in that device.

3 Q According to Judge Limbaugh's order, is that flash drive
4 recoverable and discoverable per that order?

5 A If Mr. Bakhtiari or the others governed by the order
6 owned one of these, it would be.

7 Q Does that order say any digital storage material is
8 discoverable?

9 A Do you know what paragraph you're referring to?

10 Q It is in that order.

11 A Do you mean electronic storage device?

12 Q Yes.

13 A It clearly marked electronic storage device, but you
14 indicated that your scope did not have those capabilities.

15 Q That is correct. Is that your recollection or do you
16 recall that your consultant inquired if I had a rifle and if
17 my rifle had digital scope on it?

18 A In fact, if you read page 86 of the transcript in which
19 you are under oath, you state to me: "You asked if I had a
20 camera. I said no. But then I remembered I had another
21 camera I wanted to show you."

22 And so, no, I dispute your contention that the
23 consultant asked you to display any weapon in the record on
24 page 86.

25 Q That is correct. That article shows you that some scopes

1 have the capacity to digital -- to digitally store data.

2 Doesn't that article show you that kind of scope, Exhibit 2?

3 A It tells me that in May of 2012 someone printed something
4 from a manufacturer that has a scope that allows hunters to
5 video what they look through their scope.

6 Q So would that be fair to say that when you come with that
7 order to my house, you want to make sure you go through every
8 corner to look for digital storage material, including on a
9 scope of a rifle because some scopes store data?

10 A I asked if you had any more cameras.

11 You said no. And then you said, "I have another
12 camera to show you."

13 And that's when you invited me into that room and
14 pulled out the loaded gun.

15 Q Is that scope a camera, a digital scope? Is that also a
16 camera? Does that magnify?

17 A You told me it wasn't a camera; that it did not record;
18 that it did not have any storage capability.

19 Q Did you, by any chance, suggest to the government
20 attorney to produce your consultant as a witness today?

21 A My consultant?

22 Q Your IT consultant that you brought to my house, the man
23 who inquired if the scope was a digital scope.

24 A If --

25 Q Why isn't he today to testify?

1 THE COURT: Wait a minute. Do you understand -- there was
2 three or four questions here. Which one --

3 A If you would like to call the consultant, we would make
4 him available via phone right now, Mr. Bakhtiari.

5 Q It is the burden of the attorney to prove what they want
6 to prove. But if I may move on, what time in the morning was
7 it that you and I had that exchange, alleged exchange, in my
8 room, in my bedroom?

9 A I don't know.

10 Q Is it your contention that sometime in the morning I
11 pulled out a gun and posed such horrible threats to you, and
12 then you stayed in my house, cool like a cucumber, until late
13 in the afternoon?

14 A My concern remains about the loaded gun. I did not think
15 you were likely to shoot me in front of the consultant or the
16 court reporter, but we were very wary how we backed out of
17 that room. And then if you may recall, we were always with
18 you until the very conclusion of the transcript, when you went
19 to the back of the home and all three of us ran out of the
20 front of your house.

21 Q Did you feel any threat throughout that day while you
22 were in my house?

23 A When you initially displayed the gun, I was very alarmed,
24 yes.

25 Q But you didn't step out to call the police?

1 A I wanted to make a record because I had in my mind that
2 you were sending a message -- in my belief, in my personal
3 opinion, you were sending a message relative to the email that
4 had been received, and I wanted to make that record. But I
5 was very cautious about it and I did contact law enforcement
6 after that was concluded.

7 Q Do you have any record here or either of them here that
8 you had called that day and said: I feel threatened;
9 somebody that I'm in a heated civil suit with right now pulled
10 out a gun on me?

11 A Yes. He is here.

12 Q And you called Mr. Follmer and said: I feel threatened;
13 Bakhtiari pulled a gun on me?

14 A I was very concerned about it.

15 Q But you managed to stay in my house several hours after
16 that?

17 THE COURT: You've covered that. Move along.

18 Q Yes. Now, is it again your contention that it wasn't
19 your request to inspect the scope to see if it's digital or
20 not?

21 A Not only wasn't it my request, on page 86 of the
22 transcript you acknowledge that I asked to see a camera, and
23 that's when you led me to see the gun.

24 Q It was not the -- it was not the indication or request of
25 your consultant either that some of the scopes have the

1 digital storage capacity?

2 MR. SAUER: This has been asked and answered.

3 THE COURT: It has been. Sustained.

4 MR. BAKHTIARI: I have no further questions for Mr.
5 Fogarty, Your Honor.

6 THE COURT: Any redirect?

7 MR. SAUER: Very briefly, Your Honor.

8 **REDIRECT EXAMINATION**

9 **BY MR. SAUER:**

10 Q Mr. Fogarty, you referred to page 86 of this transcribed
11 interview that occurred on January 18 of 2012, at 3889 Walsh;
12 is that correct?

13 A That's correct.

14 Q Do you remember the exact words of that interview?

15 A There is a statement.

16 Q Let me ask you this. Would it refresh your recollection
17 if I were to give you a copy of the interview as to the exact
18 words that Mr. Bakhtiari used?

19 A That would help me, yes.

20 MR. SAUER: Your Honor, may I approach the witness?

21 THE COURT: You may.

22 Q (BY MR. SAUER) I'm handing you, for the record, a copy of
23 the transcription of that interview. I'd like to direct your
24 attention to page 86. And can you just read into the record
25 the question and the answer and that you refer to or

1 summarized in your direct testimony and on cross-examination?

2 A I'm going to read the question and the answer.

3 Question: "Earlier today, when we were in your
4 house, and at some point you pull" -- it says "you pull" as
5 opposed to "pulled" -- but I'll start over.

6 "Earlier today, when you were in your house, and at
7 some point you pull a rifle from underneath your bed and show
8 it to me." That's the question.

9 Q That's the question by you?

10 A By me.

11 Q And then what is the answer by Mr. Bakhtiari?

12 A The answer is, and I quoted some of this earlier, but I
13 will read the whole answer: "Well, you demanded to inspect
14 anything that has a camera on it, and there was one box that
15 you opened. You started saying, 'Where is the camera for
16 this?' and then there was no camera for that item. You asked
17 me" -- this is Mr. Bakhtiari speaking. "You asked me if I had
18 any other cameras. I said no. And then I remembered there is
19 a camera on the rifle, on the deer hunting rifle, and I showed
20 you that."

21 Q Later on in that --

22 A And if I could complete the answer, that's when he
23 references "cross hair." "There is a deer hunting rifle that
24 I have, and that has -- that is equipped with a camera and has
25 a cross hair on it."

1 MR. SAUER: That's all the questions I have, Your
2 Honor.

3 MR. BAKHTIARI: May I pose a couple more, Your Honor?

4 THE COURT: All right.

5 **RECROSS-EXAMINATION**

6 **BY MR. BAKHTIARI:**

7 Q Mr. Fogarty, may I ask you to take a look at page 86,
8 line 7? May I ask you to read that aloud for the record,
9 which is my answer?

10 A I'll read it. I've already read it once, but I'll read
11 it again.

12 "Well, you demand to inspect anything that has a
13 camera on it. And there was one box that you opened. You
14 started saying, 'Where is the camera for this?' and then there
15 was no camera for that item. You asked me if I had any other
16 cameras. I said no. And then I remembered there is a camera
17 on the rifle, on the deer hunting rifle, and I showed you
18 that. There is a deer hunting rifle that I have, and that
19 has -- that is equipped with a camera with cross hair on it."

20 That's your answer.

21 Q Great. May I ask you to go to line 18 and read that one?

22 A Okay.

23 Q May I ask you to read it aloud for us?

24 A Right. Okay.

25 Question: "And is that what you said to me?"

1 Answer: "That is the conversations which led up to
2 you wanting to inspect the rifle and the camera on it. And
3 now I don't know what would be the recording device which you
4 would record data on a deer hunting rifle or its cross hair,
5 but you want to inspect it. You saw it."

6 Q May I ask you to go to the next page, on Line No. 5,
7 please?

8 A Are you going to skip the line where I respond to that,
9 that assertion?

10 Q Feel free to read your own line, sir.

11 A So in response to that statement by Mr. Bakhtiari, I
12 said: "Well, first of all, I didn't open the box with the
13 item that had the camera. You opened items to show us things
14 that were in certain containers you had; so let me just
15 correct that for the record. Secondly, I didn't ask to see a
16 gun. You said there was an item that you had a camera that
17 you might want to show to me, and then you retrieved that gun
18 or the gun that had what you described as cross hairs,
19 correct?"

20 Q The answer is?

21 A And then your answer is: "No. That is highly
22 inaccurate. There were -- there are a group of boxes which
23 has -- have tools and electronic tools and some power tools in
24 them in my office.

25 "Counselor Glennon Fogarty requested his contractor

1 to open them one by one and go through them to make sure that
2 we are not leaving any electronic storage device out. They
3 did so. They did not find anything. One of them looked like
4 a camera with an electronic device on it. Counsel Fogarty
5 wanted to make sure if it had record data or not. He
6 inspected that and told him there were no other camera.

7 "And he asked if I had any other cameras available.
8 And I just told them that there's a rifle with a camera on it,
9 but I don't think they record anything. And then that was
10 followed up by the rifle being inspected."

11 Q May I ask you to keep reading?

12 A Question by Fogarty: "Does the rifle have a camera on
13 it?"

14 Answer: "It has a cross hair. And the cross hair is
15 instituted within a camera."

16 Question by Fogarty: "Can you record information?"

17 Answer: "That was my point, that there is no
18 capacity on those rifles to record what the cross hair is
19 seeing. There may be some other weapons, but mine doesn't."

20 Q And so you are really saying that -- maybe would you help
21 us out with one more paragraph?

22 A Oh. Question: "So you are really saying that the rifle
23 has a scope that's a magnifier as opposed to a camera?"

24 Answer by Bakhtiari: "All rifles, all cross-hair
25 scopes have magnification capacities to them. That's one of

1 the purposes of that being there."

2 Question: "But it doesn't have a camera aspect to
3 it, does it?"

4 Answer by Bakhtiari: "Define 'camera.' If a camera
5 which is a tool which enhances your vision. Now, not all
6 cameras are recorders. Now, like I have another night-vision
7 camera that you inspected, the infrared night-vision camera.
8 That doesn't record, but that enhances the vision."

9 MR. BAKHTIARI: Thank you. Your Honor, back then, in
10 January 18, I maintained the same thing. The rifle was
11 produced at the request of Mr. Fogarty and his consultant to
12 inspect if it records digital data.

13 THE COURT: You'll have the chance to argue later.

14 MR. BAKHTIARI: Thank you, Your Honor.

15 THE COURT: You may step down, sir. You may step
16 down.

17 Did you have a question for your --

18 MR. SAUER: Did you -- you were also a victim in this
19 case. Did you wish to address the Court on that issue?

20 THE WITNESS: If it's permissible.

21 THE COURT: Yes.

22 THE WITNESS: Your Honor, this event was gravely
23 disturbing when it only affected Mr. Hiles and I was very
24 concerned for Mr. Hiles. But when it escalated several days
25 later, it was obviously of even greater concern to me.

1 And I think it's been a big impact on me and my
2 family, and it has weighed terribly. And as you have, in my
3 opinion, as we have seen today, there's been no apology, no
4 remorse, and I recommend that the most maximum sentence be
5 imposed and that restrictions be imposed on access to email or
6 internet.

7 THE COURT: All right. Thank you, sir.

8 We are going to take a ten-minute recess.

9 **(COURT RECESSED FROM 11:25 AM UNTIL 11:35 AM.)**

10 THE COURT: Okay. Ready to go.

11 MR. BAKHTIARI: Your Honor, may I call a witness?

12 THE COURT: Not out of turn, no. I allowed you one
13 already, but that was because there was a schedule --

14 MR. BAKHTIARI: I thought it was my turn. My
15 apologies.

16 THE COURT: No. I need to hear on the record the
17 rest -- that the Government's resting.

18 MR. SAUER: Yeah. Judge, the Government has no
19 further witnesses to call at this time. We had intended to
20 call Inspector Follmer, but I will rely on the sworn
21 admissions in the plea agreement for his testimony.

22 THE COURT: Very well.

23 You may present your witnesses.

24 MR. BAKHTIARI: Thank you, Your Honor.

25 THE COURT: Good morning. Please come forward, raise

1 your right hand.

2 (WITNESS SWORD BY THE CLERK.)

3 THE COURT: You may inquire.

4 SHARON L. WEISS,

5 HAVING BEEN FIRST DULY SWORD, WAS EXAMINED AND TESTIFIED AS
6 FOLLOWS:

7 DIRECT EXAMINATION

8 BY MR. BAKHTIARI:

9 Q Good morning, Ms. Weiss.

10 A Good morning.

11 Q When was the first time, roughly, when you and I met?

12 A July 2011.

13 Q What was the context of our meeting, and what format did
14 we meet?

15 A My daughter.

16 THE COURT: Would you get right up to the microphone,
17 please?

18 A My daughter was dating you.

19 Q Back in the summer of 2011, did your daughter and I move
20 in together and start living together?

21 A Yes.

22 Q Is your daughter's name Laura?

23 A Yes.

24 Q Did we become engaged last year?

25 A Yes.

1 Q Do you recall a Sunday happening to be January 15 of
2 2011 -- 2012, January 15 of 2012, this year, a Sunday, did me
3 and some other people have dinner at your house that night?

4 A You did.

5 Q Who were the people who had dinner at your house that
6 night?

7 A It was you and Laura and Ali Mir.

8 Q Who is Ali Mir?

9 A He's a friend of yours and Laura's.

10 Q Did we share with you about what we did throughout the
11 day that day? Did you hear from either of those parties?

12 A Yes.

13 Q What was it that we attended that day?

14 MR. SAUER: Objection. Calls for hearsay.

15 THE COURT: No -- okay. Who is telling you what they
16 did?

17 MR. BAKHTIARI: Your Honor, this is an exception to
18 the hearsay because Ms. Weiss was a part of that conversation,
19 and she was the part of the events throughout that day with
20 us.

21 THE COURT: All right. Okay. As long as it's in her
22 presence. Overruled.

23 Q (BY MR. BAKHTIARI) Yes, Your Honor.

24 Did you hear from -- did you find knowledge of what
25 we did throughout the day, morning and afternoon, of that

1 Sunday?

2 A Yes. You went -- you all had went to a Cardinal party,
3 and I had been after you guys to come and eat dinner with us,
4 and you came and ate dinner with us.

5 Q So what time was it, roughly, that we came to your house
6 for dinner?

7 A Like four or five, something like that, in the evening.

8 Q Did we stay after dinner at your house?

9 A Yes.

10 Q Roughly until what time?

11 A Probably 11:30, 12:00.

12 Q Do you recall if I left your house or excused myself from
13 the table for a long period or --

14 A No.

15 Q Did I left the premises of your house?

16 A No, you did not.

17 Q Where is your house located?

18 A It's in Festus, Missouri, outside of the city limits of
19 Festus.

20 Q Are you between -- is that fair to say you're between
21 Festus and De Soto?

22 A Yes, yes.

23 Q Ms. Weiss, I have an exhibit. Is that the picture of the
24 wedding from between me and your daughter?

25 A Yes, it is.

1 Q Did I marry your daughter?

2 A Yes, you did.

3 Q Was that on March 31 of this year?

4 A Yes.

5 Q Were we engaged about a year prior to that?

6 A Probably.

7 Q Am I the sole provider for your daughter?

8 A Yes, you are.

9 Q Does your daughter suffer from lupus?

10 A Yes, she does.

11 Q When we were engaged back in 2011, and earlier in 2012,
12 did I convey to you that I had health insurance and my
13 intention was to care for my new bride?

14 A Yes.

15 MR. SAUER: Objection, calls for self-serving hearsay
16 statement of the defendant himself.

17 THE COURT: Yeah, I think it does. Overruled. I
18 will hear it.

19 Q Did I lose health insurance sometime by March or April,
20 as best of your knowledge?

21 A Yes.

22 MR. SAUER: Objection.

23 Q That I told you of?

24 A Yes.

25 MR. BAKHTIARI: Your Honor, I'm asking for her

1 knowledge. I'm not asking for what she's heard.

2 THE COURT: I haven't heard the objection yet.

3 MR. SAUER: I was going to object on the personal
4 grounds of hearsay because it's pretty clear that the form of
5 the question was: Did I tell you such and such? Her response
6 will just be repeating back what the defendant has told to
7 her. That's a self-serving prior statement of the defendant
8 as used to buttress his own credibility and not subject
9 himself to cross-examination.

10 I also object on the grounds of relevance. I don't
11 see how any of this is relevant to any of the enhancements.

12 MR. BAKHTIARI: Your Honor, we are speaking --

13 THE COURT: I will -- the objection is sound. I will
14 overrule it, however, and let you proceed. Go ahead.

15 MR. BAKHTIARI: Thank you, Your Honor, because this
16 witness is speaking --

17 THE COURT: I'm letting you proceed. Go ahead.

18 Q (BY MR. BAKHTIARI) Ma'am, as the mother of Laura Weiss,
19 did you take a dutiful approach to make sure she'll have
20 health insurance when she is married?

21 A Yes.

22 Q So she made -- you made your own finding as to if they
23 were going to have health insurance while married or not?

24 A Yes.

25 Q Are you aware if I am supporting small children?

1 A Yes.

2 Q If you flip those pages, second and third page, are those
3 children that I support?

4 A Yes.

5 Q Based on your knowledge and your findings, am I the sole
6 supporter of those children?

7 A Yes.

8 Q Based on your knowledge and your findings and your
9 experience with your daughter, is she able to live on her own
10 without me?

11 A No.

12 Q Are those children able to be supported and live on their
13 own without me?

14 A No.

15 Q Has your daughter exhibited her opinions about her
16 current marriage? Is she happy?

17 A She is very happy.

18 Q Do you know why she doesn't say to me directly sometimes?

19 A Do what?

20 MR. BAKHTIARI: I withdraw that question, Your Honor.
21 Your Honor, I'm done with this witness. Thank you.

22 THE COURT: Any questions?

23 MR. SAUER: Very briefly.

24 **CROSS-EXAMINATION**

25 **BY MR. SAUER:**

1 Q Ms. Weiss, you care deeply about your daughter, I
2 presume?

3 A Yes.

4 Q And you care about her welfare?

5 A Of course.

6 Q And you don't want to see Mr. Bakhtiari go to prison
7 because it could affect your daughter's welfare; is that
8 correct?

9 A Yes.

10 Q You testified that he and Mr. Mir attended dinner at your
11 house on January 15 of 2012?

12 A Yes.

13 Q How do you know it was that exact date?

14 A You know, I knew you would ask me that, and the reason
15 being, I'm a teacher's aide, and I was off school the next
16 day. So them staying late didn't bother me because I knew I
17 didn't have to work the next day. That's the only reason I
18 remembered that.

19 Q How do you know it wasn't a Saturday evening as opposed
20 to a Sunday evening?

21 A Because I remembered them saying they didn't go to church
22 that day and later that they went -- had went to a Cardinal
23 party. That's the only reason why.

24 Q How do you know it wasn't the three-day weekend that
25 falls in February as opposed to January?

1 A Because I just remember it, Martin Luther King's
2 birthday.

3 Q Did you discuss your testimony with Mr. Bakhtiari before
4 you came to testify today?

5 A No.

6 Q So he never suggested to you that it was the 15th of
7 January as opposed to some other day?

8 A No, no.

9 MR. SAUER: That's all I have, Judge.

10 THE COURT: All right. You may step down. You are
11 excused, ma'am.

12 You may call your next witness.

13 MR. BAKHTIARI: Yes, Your Honor.

14 **(WITNESS SWORN BY THE CLERK.)**

15 MR. BAKHTIARI: Your Honor, may I clarify that this
16 witness will speak only to the sentencing factors listed under
17 18 U.S.C. 3553(a) and to the background, career, and character
18 of the defendant, which would be me.

19 **MICHAEL GREGORY SALAZAR,**

20 **HAVING BEEN FIRST DULY SWORN, WAS EXAMINED AND TESTIFIED AS**
21 **FOLLOWS:**

22 **DIRECT EXAMINATION**

23 **BY MR. BAKHTIARI:**

24 Q Mr. Salazar, good morning to you.

25 A Good morning.

1 Q When was the first time when you and I met?

2 A Oh, approximately two and a half to three years ago.

3 Q Did you ask me, upon meeting, to join your evangelistic
4 team?

5 A Shortly thereafter, yes.

6 Q Is that fair to say that I served both as the IT person
7 and also as an evangelist in your ministry?

8 A Yes, it is.

9 Q Did you and I travel together for evangelistic purposes?

10 A Yes.

11 Q Last year, in 2011, did we speak in a few places in
12 Missouri, a few churches?

13 A Yes, we did.

14 Q In January and February of this year, did you and I
15 travel to a few churches in the states of Georgia and Florida?

16 A In January? Yes. And at the end of December as well.

17 Q And did we go to states of Georgia and Florida?

18 A Yes.

19 Q What were the purposes of these trips?

20 A Evangelistic missions and to reach the lost.

21 Q How many years have you been a pastor, sir?

22 A Approximately twenty.

23 Q Have you heard that for some reason or another some
24 Muslim nations sometimes issued fatwas?

25 A Yes, I have.

1 Q When you invited me to join your team, were you worried
2 about any fatwa issues?

3 A No.

4 Q Did you suspect that it may come up like in a complaint
5 or objection at some time by the Muslim nations?

6 A Possibly.

7 Q Did those churches, did they broadcast our evangelistic
8 speeches on the internet?

9 A Yes, they did.

10 Q Specifically, did the church in Daytona, Florida, did
11 they broadcast it live internationally?

12 A Yes.

13 Q Mr. Salazar, did you receive that letter to your
14 residence in your house?

15 A Yes.

16 Q May I first point your attention to the last page from
17 the bottom. If you flip through the very last page, is that
18 the tracking list -- is that the DHL tracking list?

19 A Yes.

20 Q From the very bottom line, is that letter issued from --
21 is that letter coming from Tehran, Iran?

22 A Yes.

23 Q May I ask you to read back to the first page, and may I
24 ask you to please read that?

25 THE COURT: I can see it. Is this it?

1 MR. BAKHTIARI: Yes, Your Honor.

2 THE COURT: I can read it.

3 MR. BAKHTIARI: Thank you, Your Honor. My apologies.

4 THE COURT: Let me read it. Just a minute. Let me
5 read it.

6 MR. BAKHTIARI: Yes, Your Honor.

7 THE COURT: Okay. Go ahead.

8 Q (BY MR. BAKHTIARI) Mr. Salazar, after you received that
9 letter, did you immediately call me on the phone?

10 A Yes.

11 Q Did you read this letter to me?

12 A Yes.

13 Q Did I ask you immediately to dismiss me from duties in
14 your team?

15 A Yes.

16 Q Did you later on, through the phone conversation,
17 convince me to stay or reconsider?

18 A Yes.

19 Q Did we meet in person afterwards?

20 A Yes.

21 Q Was your perception that I was fearful? Did you perceive
22 me as a man who was scared at the time?

23 A Yes.

24 Q Did you and I -- did you and I get a visit from FBI
25 agents about this issue?

1 A Yes.

2 Q Do you know if it's still under investigation?

3 A No.

4 Q Now --

5 A I don't know.

6 Q You don't know.

7 Your Honor, there is a video clip, which is one
8 minute, that is an exhibit associated with this witness. May
9 I play that?

10 THE COURT: Sure. Will you assist him with that?

11 THE CLERK: He has it hooked up.

12 THE COURT: Okay.

13 MR. BAKHTIARI: May I proceed, Your Honor?

14 THE COURT: Yes.

15 **(VIDEO CLIP PLAYED.)**

16 MR. SAUER: Judge, I'd renew my objection, not as to
17 the playing of this, but as to any reliance on it by the Court
18 as a submission of the defendant's own self-serving hearsay
19 prior statements.

20 THE COURT: All right.

21 Q (BY MR. BAKHTIARI) Mr. Salazar, did those investigators do
22 their own independent investigation into the matter, the
23 reporters that you just saw on the clip?

24 A I believe so.

25 Q Did they take our own word for it, or did they do their

1 own independent work on the whole story?

2 A I believe they did some independent work.

3 Q Mr. Salazar, did we get a reaction from the Muslim
4 community of St. Louis after this clip was broadcasted?

5 A No.

6 Q Mr. Salazar, did you have a major surgery on your leg
7 recently?

8 A Yes.

9 Q Is that why the ministry is on hold for a few months that
10 we've had from traveling?

11 A Yes.

12 MR. BAKHTIARI: I have to load another exhibit. It's
13 a website. It's not a video clip, Your Honor. If I may?

14 THE COURT: All right.

15 MR. BAKHTIARI: Because we don't have access to the
16 internet here, Your Honor, I would forgo that website. I will
17 just simply ask the witness a question.

18 THE COURT: All right.

19 Q (BY MR. BAKHTIARI) Mr. Salazar, does your ministry have a
20 branch in Kansas City?

21 A Yes.

22 Q And who leads that branch?

23 A You do.

24 Q What are the activities that that branch does?

25 A Doing evangelistic work in the outdoors, reaching out to

1 people. Also serving meals, I believe that's every Thursday,
2 to the needy and the homeless.

3 Q Who is the head chef for that mobile soup kitchen?

4 A I'm not sure if it's you or your wife.

5 Q And do you recall that you and I have had disagreements
6 about different things while traveling together?

7 A Yes.

8 Q Did we reason or did I come across violence to you at the
9 point of disagreement?

10 A Never any violence.

11 Q Does our evangelistic work, does that include
12 interpersonal interactions with different people from
13 different walks of life? Is that fair to say?

14 A Yes.

15 Q Are you happy with the interactions that you see between
16 me and your audience?

17 A Yes.

18 Q Do you lead the evangelistic team? Are you the leader?
19 Are you the lead evangelist in our team?

20 A No.

21 Q Who is the lead in our team?

22 A You are.

23 Q And if you see any -- if you see any downfalls or any
24 negativities, would you address that?

25 A Yes.

1 MR. BAKHTIARI: I have no further questions for Mr.
2 Salazar, Your Honor.

3 THE COURT: All right. Questions?

4 MR. SAUER: Briefly, Your Honor.

5 **CROSS-EXAMINATION**

6 **BY MR. SAUER:**

7 Q Pastor Salazar, what independent investigation did the
8 news reporters do other than take the word of yourself and Mr.
9 Bakhtiari that you -- you, in fact, did receive that letter,
10 right?

11 A Yes.

12 Q It was a DHL package; is that correct?

13 A Yes.

14 Q And you reported it to the news station, or Mr. Bakhtiari
15 reported it to the news station?

16 A I'm not sure how they found out.

17 Q What independent investigation did they do other than
18 interviewing yourself and Mr. Bakhtiari?

19 A Well, even for the sound bites, you heard that they went
20 and they talked to a mosque out in West County.

21 Q Did you hear them also say that the mosque just didn't
22 give them any response at all?

23 A I believe that later they did.

24 Q But at the time they were reporting that, they said the
25 mosque didn't give them any response?

1 A At that particular moment, no.

2 Q So other than contacting a mosque who didn't respond, are
3 you aware of them doing any other investigation?

4 A Yes. I'm --

5 Q What did they do?

6 A I believe I was told -- as a matter of fact, I know I was
7 told that they did contact the mosque in question in West
8 County and that they brought forth a news -- you know, a
9 report of their own.

10 Q I'm sorry. At the time of the news clip --

11 THE COURT: Wait, wait, wait, wait. Wait until the
12 question before you answer.

13 Q At the time of the news clip that was just played, are
14 you aware of those reporters receiving any substantive
15 information about this issue other than what yourself and Mr.
16 Bakhtiari had reported to them?

17 A No.

18 Q You were interviewed -- you also reported this to the
19 FBI; is that correct?

20 A Yes.

21 Q And an FBI agent came and interviewed you; is that
22 correct?

23 A Yes.

24 Q And at the time -- you were aware at the time this fatwa
25 arrived that Mr. Bakhtiari was already under indictment for

1 sending the threatening email to Brad Hiles; is that correct?

2 A No.

3 Q You were aware that he was under indictment, though,
4 weren't you?

5 A Yes.

6 Q Did you know the particulars of that indictment?

7 A No.

8 Q Did you know that it was an indictment for obstruction of
9 justice?

10 A No.

11 Q But were you generally aware that he had federal charges
12 pending at the time?

13 A Yes.

14 Q In the course of the interview with the FBI, Mr.
15 Bakhtiari provided information about this purported fatwa; is
16 that correct?

17 A Yes.

18 Q But he did not tell the FBI agent that he was currently
19 under federal indictment at that time, did he?

20 A I don't recall.

21 Q Do you recall after Mr. Bakhtiari -- outside the presence
22 of Mr. Bakhtiari, do you recall plucking the sleeve of the FBI
23 agent and telling him, Hey, I just want to let you know Mr.
24 Bakhtiari didn't say so, but you advised the FBI that he was
25 under the federal indictment. Do you recall doing that?

1 A No.

2 Q Were you aware that Mr. Bakhtiari sent me an email the
3 day after this supposed fatwa arrived demanding that he be
4 given probation in his case because of the fatwa?

5 A No.

6 Q Were you aware that the FBI conducted an investigation of
7 this fatwa and deemed it to be wholly noncredible?

8 A No.

9 Q Were you aware that the FBI suspected or believed that
10 Mr. Bakhtiari had arranged for this to be sent by himself?

11 A No.

12 MR. SAUER: No further questions, Your Honor.

13 MR. BAKHTIARI: May I, Your Honor? I have to
14 redirect a few things.

15 THE COURT: All right.

16 **REDIRECT EXAMINATION**

17 **BY MR. BAKHTIARI:**

18 Q Mr. Salazar, are you aware if the FBI agent and I had
19 phone conversations individually, one-on-one, before and after
20 that meeting?

21 A No.

22 Q Do you recall -- because if you were not a part of those
23 conversations, so you do not know if I disclosed anything
24 about these charges to them or not; is that correct?

25 A Correct.

1 Q Mr. Salazar, were you and I involved in the evangelism
2 years prior to the March of 2012? Were you and I doing this
3 evangelistic work --

4 A No.

5 Q -- years prior? A year prior to the --

6 A We started in, I believe, 2010 and '11.

7 Q 2010 and '11?

8 A Yes. It ended --

9 Q Is that several months prior?

10 THE COURT: Wait, wait, wait. You know, we just
11 can't have two people talking at the same time.

12 Q Yes, Your Honor. That is my fault. And my apologies.

13 You and I started in 2010 doing this evangelistic
14 work?

15 A I believe so, yes.

16 Q Where I was -- based on your knowledge, was I indicted
17 back then?

18 A I didn't know anything about that back then.

19 Q Based on your knowledge, these types of evangelistic
20 works which are done by Muslim converts, are they bound to
21 attract fatwas sooner or later, based on your experience?

22 A Yes.

23 Q Based on your experience and knowledge, are there
24 evangelists who are in death row sitting in Iran?

25 A Yes.

1 Q Do you know if there are Muslim converts to
2 Christianities?

3 A Yes.

4 Q Do you know if either of them are indicted by Mr. Sauer?

5 THE COURT: Wait, wait, wait.

6 MR. SAUER: Judge, I'm going to object about his
7 testifying as to what the state of evangelists in Iran is. He
8 obviously has no personal knowledge. He's not an expert.

9 THE COURT: Right. Yeah. Well, it's already in, but
10 let's get the record straight. That's the important thing.
11 Where do you need to pick up, Ms. White?

12 **(THE REPORTER READ BACK THE PORTION OF THE LAST QUESTION.)**

13 THE COURT: All right. Ask a new question.

14 Q Do you know if either of those evangelists are right now
15 opposing Mr. Sauer in any lawsuits?

16 MR. SAUER: Objection.

17 A No.

18 MR. BAKHTIARI: Thank you, Your Honor. I have no
19 further questions for Mr. Salazar.

20 THE COURT: You are excused.

21 MR. BAKHTIARI: Your Honor, if I may, I have a video
22 clip which is another one minute that speaks to my cooperation
23 with the law enforcement, just to play for the Court. And
24 then there is a Mr. -- my understanding was it is customary
25 that defendant's friends and relatives speak to the Court

1 prior to the defendant being sentenced.

2 There is a short letter Mr. Salazar wants to read to
3 the Court, and there is a short letter that my wife wants to
4 read to the Court. There is a short letter that the guardian
5 of my children as an affidavit of fact is read into the court.
6 These are very brief. Each one of them is like one minute.
7 And then I believe we are done.

8 THE COURT: All right.

9 MR. SAUER: Judge, I don't object to written letters
10 on behalf of defendant being submitted. I do object to
11 persons other than the defendant addressing the Court by way
12 of allocution. I think they would be required to take the
13 stand and testify. If they want to submit like a letter and
14 that's all, there's no need for that to be read aloud. They
15 can just be submitted to the Court. But to the extent they
16 want to speak to the Court, I think they have to be placed
17 under oath.

18 MR. BAKHTIARI: Your Honor, could we keep Mr. Salazar
19 under oath so he can read his letter to the Court under oath?

20 THE COURT: No. If you'll just give me the letters,
21 I will read -- I can read the letters, okay?

22 MR. BAKHTIARI: Yes, Your Honor. Definitely so. I
23 will simply play the video and then proceed by my closing
24 argument.

25 THE COURT: All right.

1 MR. BAKHTIARI: Thank you.

2 MR. SAUER: Judge, I'm not sure what this video is,
3 but if it is what I believe, I will just note my objection.

4 THE COURT: Wait. A little slower, Mr. Sauer, and at
5 the microphone.

6 MR. SAUER: Judge, Mr. Bakhtiari hasn't shared with
7 me what's on this video, but based on his characterization, I
8 suspect it's full of irrelevant materials and hearsay. So I
9 object to its consideration, but I don't object to it being
10 played.

11 THE COURT: If it's one minute, I'll hear it, and
12 then I can sort it out. Overruled.

13 **(VIDEO CLIP PLAYED.)**

14 THE COURT: Okay. Now, I want to make sure I
15 understood what I just saw. You're putting this on to
16 demonstrate you are a --

17 MR. BAKHTIARI: Your Honor --

18 THE COURT: -- intellectual technical person?

19 MR. BAKHTIARI: I am a volunteer cyber forensics
20 expert for St. Louis County Police. This is one of the many
21 cases that we have done. For example, for this case --

22 THE COURT: Okay. I got it. I got it. Thank you.
23 All right. Do you have your letters?

24 MR. BAKHTIARI: Yes, Your Honor. Your Honor, these
25 have been already submitted to the Court with my objections to

1 PSR. Mr. Sauer has his copies, and I believe the Court does,
2 but just to make sure, I have separated them and resubmit them
3 to the Court herewith.

4 THE COURT: All right. Now, if you want -- I don't
5 want the persons you mentioned to read them. I can read them
6 myself. If you want them to testify, then I will hear their
7 testimony.

8 MR. BAKHTIARI: Your Honor, the grandmother of
9 children who is a partial guardian, she is ill, so she has
10 submitted an affidavit of facts under oath.

11 THE COURT: All right.

12 MR. BAKHTIARI: And the rest of them are not
13 authenticated with affidavits, and they just -- it was their
14 understanding that defendant's relatives could speak to the
15 Court.

16 THE COURT: And they can, but I can read their
17 letters. I don't need to --

18 MR. BAKHTIARI: Yes, Your Honor. That would suffice
19 for me. If I may, Your Honor, if the Court would allow me, I
20 have a one-minute statement directed at the Hiles family and
21 one or two minutes closing arguments, and then we are done.

22 THE COURT: Well, we will get to that eventually, and
23 these letters, we will get to those, but first of all, I have
24 to make rulings on the United States Sentencing Guidelines,
25 and then I will have allocution.

1 I have pulled the plea agreement because there are
2 some things about your evidence that suggest to me that you
3 are trying to convince me contrary to what you pled guilty to,
4 and if that happens, then I have to take away your points for
5 acceptance of responsibility.

6 I have read the statement of facts to which you agree
7 by signing the agreement, and I specifically asked you during
8 the plea colloquy if you had any disagreement with the facts
9 recited in the record by Mr. Sauer, and there were none.

10 So are you -- I just need to know, are you now saying
11 that these facts are not correct?

12 MR. BAKHTIARI: Your Honor, every single word that
13 that affidavit -- that that plea document says, I have done.
14 Whatever it doesn't say, I have not done.

15 Your Honor, I came to the court today and I brought
16 my jackets with me. If I turn around and say, I caused my
17 jacket to be brought to the court, that that raises more
18 questions than answers.

19 Mr. Sauer said to me, said to Ms. Smith, and wrote to
20 this Honorable Court in large print, that his priority lies in
21 his racketeering cases that are high-profile cases. He rushed
22 through drafting that statement. It is the law of the Eighth
23 Circuit, Your Honor, that that plea agreement is in jeopardy
24 in the light favorable to defendant because the Government
25 drafted --

1 THE COURT: Wait, wait. Now --

2 MR. BAKHTIARI: Your Honor, I have --

3 THE COURT: Wait, wait, wait. Now, wait a minute.

4 MR. BAKHTIARI: Yes, please.

5 THE COURT: Answer my question. Are you now saying
6 these facts are not the facts you agreed to, and you want --
7 you do not want me to accept these facts?

8 MR. BAKHTIARI: Please accept them, Your Honor. They
9 are all true.

10 THE COURT: All right. Now, you may sit down.

11 MR. BAKHTIARI: Thank you, Your Honor.

12 THE COURT: I have read the -- obviously, I had read
13 the presentence report. I have read all of the memorandums
14 filed on behalf of both parties. I have read the cases which
15 I have here and have cited -- that are cited by the defendant.
16 I heard evidence, and I shall now make calculations under the
17 United States Sentencing Guidelines.

18 The 2012 guideline manual was used to determine the
19 defendant's offense level under United States Sentencing
20 Guideline 1B1.11. Count 2, obstruction of an official
21 proceedings. The base offense level for violation of 18,
22 United States Code, 1512(c)(2) is found in United States
23 Sentencing Guidelines Section 2G1.2(a) of the manual. The
24 base offense level is 14 under 2J1.2.

25 Specific offense characteristics. As the offense

1 involved threatening to cause physical injury to a person in
2 order to obstruct the administration of justice, eight levels
3 are added under United States Sentencing Guideline
4 2J1.2(b)(1)(B).

5 I have heard substantial evidence. In this regard I
6 am convinced more than a preponderance of the evidence, but
7 the evidence is clear and convincing that the defendant did,
8 in fact, threaten or cause physical injury to a person, and it
9 happened in the form of sending a threatening or sending the
10 email and then the follow-up presentation of a loaded rifle
11 with the scope and cross hairs on the rifle to the victim's
12 law partner. And my belief is that was done to demonstrate
13 that the defendant had the ability to inflict serious harm
14 against not only the defendant -- not only the victim, but his
15 wife, his son, his daughter-in-law.

16 He went to great extent to take photographs of
17 wedding photographs and place cross hairs on the foreheads of
18 the daughter-in-law and of the son of Mr. Hiles. And this
19 clearly satisfies the requirements of 2J1.2(b)(1)(B).

20 The next is, as to the offense was extensive in
21 scope, planning, and preparation, two levels are added under
22 2J1.2(b)(3)(C). In this case the defendant went to
23 extraordinary efforts to get -- locate Mr. Hiles' residence,
24 sent pictures of the residence, sent pictures of the recent
25 daughter-in-law and son with cross hairs on their forehead,

1 obviously taking a lot of planning, preparation to present
2 those menacing photographs.

3 The individuals of Hiles, the entire family, the
4 Fogarty family have suffered severely from these actions of
5 the defendant. Two levels are justified under 2J1.2(b)(3)(C).

6 There is a obstruction of justice in paragraph --
7 enhancement under paragraph 28. I need to have your further
8 explanation. I'm not so convinced about paragraph 28. I'd
9 like to hear first from you, Mr. Sauer, as to why you believe
10 there should be an additional two-level enhancement.

11 MR. SAUER: Yes, Your Honor. Your Honor, in this
12 case the probation office in the disclosure presentence
13 investigation report recommended a further enhancement for
14 obstruction of justice on the ground that the defendant, once
15 he was under indictment, eight weeks after he was indicted,
16 submitted false affidavits to the U.S. Attorney's office and
17 attempted to file them with the court, falsely claiming that
18 the postal inspectors, when they had arrested him and
19 conducted a search warrant on his house, had subjected himself
20 and his wife to, quote, torture and sexual abuse, including
21 shackling them naked to furniture and subjecting them to
22 various abusive behaviors in the course of that.

23 These allegations, when I received them, were
24 appalling to me. They were unsettling, deeply unsettling to
25 the honest and decent agents that were involved in this, and I

1 immediately knew them -- believed them to be false and that my
2 belief was probably confirmed by the fact that there were
3 photographs taken in the course of the search warrant that
4 were directly inconsistent with those claims.

5 In the course of negotiations with Mrs. Smith or Ms.
6 Smith, Andrea Smith over the summer, I offered -- made a very
7 generous, I think, plea offer to the defendant that he would
8 not be prosecuted for perjury and obstruction of justice on
9 the basis of those allegations if he would admit that they
10 were knowingly false. He did so in the plea agreement. The
11 plea agreement is very explicit on this point.

12 And at that time, I forwent in negotiating the plea
13 agreement the opportunity to seek an enhancement for
14 obstruction of justice on the basis of those particular
15 actions.

16 However, as I've set forth in my sentencing
17 memorandum, the plea agreement also specifies that if the
18 defendant submits false information, intentionally provides
19 misleading, incomplete, or untruthful information to the
20 probation office, and so forth, or commits any crime, the
21 Government may, in its discretion, proceed with a request for
22 the enhancement of the obstruction of justice.

23 I've set forth in my sentencing memorandum on pages
24 17 to 19 my belief that the defendant has violated the terms
25 of the plea agreement by repeatedly taking positions both in

1 private correspondence and threats of litigation against the
2 Post Dispatch in filings with this court and now in open court
3 here today, taking positions that are manifestly contrary to
4 his sworn statement of facts that he agreed in the course of
5 the plea agreement.

6 This, to my mind and I think on the plain terms of
7 paragraph 11 of the plea agreement, constitutes a breach of
8 the plea agreement that permits the Government may, in its
9 discretion, proceed with the agreement and may advocate for
10 any sentencing position supported by facts including, but not
11 limited to, obstruction of justice and denial of acceptance of
12 responsibility.

13 So as a basis for the two-level enhancement for
14 obstruction of justice, I would offer two general grounds.
15 First, the affidavits, the false affidavits accusing federal
16 agents of torture and sexual abuse that were submitted to the
17 U.S. Attorney's office and that were attempted to be submitted
18 to the court and that the defendant has now admitted in his
19 plea colloquy were -- the allegations were false and that he
20 made those allegations for the sole purpose of attempting to
21 retaliate against the federal officers and for the purpose of
22 corruptly influencing the proceedings in this criminal case.
23 So that basis is alone sufficient to satisfy the obstruction
24 of justice enhancement.

25 However, I've also set forth in significant detail on

1 pages 17 to 19 an alternative basis for those two levels for
2 obstruction of justice, which consists of the various
3 statements of false information that the defendant has
4 submitted to the court in preparation for this sentencing
5 proceeding. And in particular, I would direct to the Court's
6 attention to setting forth in our sentencing memorandum how
7 all the representations he's made have been directly contrary
8 to the plea agreement.

9 The bottom line, Judge, is that the defendant wants
10 the benefit of a plea bargain, that is, the reduction of
11 sentence, without the cost of a plea bargain, which is
12 admitting that you did the crime and taking responsibility for
13 it. He has persistently throughout the course of this
14 morning, throughout the course of his voluminous filings in
15 this court, persistently failed to accept responsibility for
16 actually threatening Brad Hiles, threatening Brad Hiles'
17 family, threatening Mr. Fogarty.

18 Within the last two hours, we have heard extensive
19 implication and argument from the defendant that he didn't
20 even know that email was being sent. He's taken the same
21 positions in his papers before the Court. The problem is, in
22 order to plead --

23 THE COURT: Slow down, please.

24 MR. SAUER: I apologize, Judge. The problem with
25 that position is that he's taken a directly contrary position

1 in the plea agreement of which he still wants the benefit, and
2 yet he will not accept responsibility for his actions.

3 So I would offer to the Court two alternative bases,
4 each independently sufficient, for the two-level enhancement
5 for obstruction of justice: The affidavits accusing Mr.
6 Follmer and the other agents of torture and sexual abuse, as
7 well as the false statements that he's made in his -- in
8 relation to this particular sentencing hearing.

9 Thank you, Your Honor.

10 THE COURT: All right. You may respond, if you care
11 to.

12 MR. BAKHTIARI: Thank you, Your Honor. In regards to
13 the -- in regarding the two-level downward variance, Your
14 Honor, as I mentioned before this Court today, I stand behind
15 every single word of the plea agreement. Whatever it says, I
16 have done. It says I, as a minor contributor, contributed to
17 that email coming about. I have shamefully conceded to that,
18 and I do not dispute that.

19 The publications of the letter do not portray the
20 plea agreement as it was, and it exaggerates them. I wrote to
21 them. I asked them to redact it. That underlines the premise
22 of what the Government is advocating for. I followed the due
23 process for that.

24 I -- the Eighth Circuit says the timing and the
25 nature of the defendant's obstructive conduct, the degree of

1 his acceptance of responsibility, whether his obstruction of
2 justice was an isolated and early incident, whether he
3 voluntarily terminated his obstructive conduct, whether he
4 admitted and recanted his obstructive conduct, whether he
5 assisted in the investigation and his others offenses.

6 There is no magic formula. And this is the
7 Stoltenberg law, basically, which is the law of the Eighth
8 Circuit. Your Honor, listing those Stoltenberg factors here,
9 I -- if the language of the plea deal, plea agreement is not
10 clear, well, I don't know what to adhere to. I admitted that
11 I, as a minor contributor, contributed to the email being
12 sent. The Government itself has conceded they don't know who.
13 They don't know how. They don't know what steps were taken.

14 THE COURT: Well, it goes beyond that. I've heard
15 evidence about, you know, you using the word "cunt," about
16 using the word "dear" in the presence --

17 MR. BAKHTIARI: Yes, Your Honor.

18 THE COURT: I mean, I'm convinced you sent the email.
19 I mean, that's just clear to me --

20 MR. BAKHTIARI: I may have contributed to that, and I
21 shamefully accept that, Your Honor, and I have -- in my
22 pleadings I have said that many times, that I stand behind
23 every single word that the plea agreement says.

24 THE COURT: Okay.

25 MR. BAKHTIARI: But that language of that should be

1 clear to clear my conduct because the sentence is weighed
2 against the conduct, not against the intent, as the Court well
3 knows. Furthermore --

4 THE COURT: Wait. I don't understand what you just
5 said. Of course, intent has everything to do with it.

6 MR. BAKHTIARI: Your Honor, but the court -- the
7 judicial courts do not punish a defendant for having bad
8 intent. They punish a defendant for having, for --

9 THE COURT: Conduct.

10 MR. BAKHTIARI: For conduct.

11 THE COURT: Right.

12 MR. BAKHTIARI: Now, on several spots on that plea
13 agreement we have set -- I have conceded that, yes, bad
14 intent, I carried those at times, because I knew that the law
15 does not punish me for bad intent.

16 THE COURT: All right. Well, let's move on to
17 something else. I'm not buying that.

18 MR. BAKHTIARI: Yes, Your Honor.

19 THE COURT: Secondly, do you admit that you told
20 agents that the police tied you up, handcuffed you, while you
21 were naked? You admit that that's false?

22 MR. BAKHTIARI: Your Honor, those actions happened
23 while I was arrested, but my wife and I were in two separate
24 rooms. We could not exactly in person see the other.
25 Attorney Smith told me that there is a lot of room for error.

1 THE COURT: Well, wait.

2 MR. BAKHTIARI: I proposed that motion, and then I
3 redacted it. If it's not been filed with the court, it is not
4 before the court.

5 THE COURT: No, no. Wait, wait. Did you make the
6 false statement that you and your wife were handcuffed
7 together when you were both naked?

8 MR. BAKHTIARI: Your Honor, that statement may have
9 inaccuracy in it, but it's not right-out false. My wife has
10 written in her letter to you that we were abused, and those
11 allegations to the majority of them are correct. But because
12 they may have inaccuracies in them, I redacted my motion. I
13 asked the clerk not to file it, and it was returned to me.

14 And Mr. Sauer should at least honor this motion that
15 I called and I went to great length; that the motions do not
16 come on file so the Court would not have the loss of time of
17 entertaining something that I knew they may have inaccuracies
18 in them. And that is a two-level enhancement for obstruction
19 of justice, Your Honor.

20 And again, I have adhered to the language of the plea
21 agreement. And if it's vague, then the law of the Eighth
22 Circuit interprets that to my favor. And it is vague.

23 Mr. Sauer, if he agrees -- if he believes I sent
24 those letters, emails, he could say: Bakhtiari sent the
25 email. But he has put in there: Bakhtiari caused the email

1 to be sent. English is my third language, Your Honor, but I
2 think I understand it well enough to know if he believes I
3 have sent it, he could send -- write in his plea agreement:
4 Bakhtiari sent the email; Bakhtiari made the threat.

5 THE COURT: Well, you know, you just keep digging the
6 hole deeper. I've heard enough.

7 MR. BAKHTIARI: Thank you, Your Honor.

8 THE COURT: For the Court to find obstruction of
9 justice under 3C1.1, the Court must make independent
10 evaluation to determine if defendant committed perjury when he
11 objected to the enhancement. One of my concerns is, I do
12 intend to deny acceptance of responsibility under 3E1.1(a) and
13 (b). And I believe that I am not going to make the
14 obstruction of justice under 3C1.1 finding.

15 I will cite a number of cases. They are United
16 States v. Abdul-Aziz. That's Eighth Circuit 2007 opinion.
17 United States v. Crobsy. It's a Eighth Circuit 1996 opinion.
18 United States v. Gomez, Eighth Circuit '99 opinion. And
19 United States v. Iverson, 1996 Eighth Circuit opinion.

20 My concern is that I have to find that the defendant
21 committed perjury. I'm not persuaded based upon everything
22 I've heard, giving the defendant the benefit of inferences,
23 that he did. So the enhancement for obstruction of justice
24 under 3C1.1 will not be granted.

25 The defendant has throughout this case denied --

1 strike that -- has demonstrated that he has not accepted
2 responsibility for his actions in this case, and therefore, I
3 am not allowing the three-level reduction either under
4 2A1.1(a) or 2E1.1(b) either -- I'm sorry -- 3E1.1(a) or
5 3E1.1(b). The total offense level is 24.

6 Where is the probation officer? What is the
7 guideline for total offense level of 24 and a criminal history
8 category of 1?

9 PROBATION OFFICER: Judge, it would be 51 to 63
10 months.

11 THE COURT: Pardon me? 51 to 63?

12 PROBATION OFFICER: Correct. And the fine range
13 would change from \$10,000 to \$100,000.

14 THE COURT: Okay.

15 PROBATION OFFICER: The term of supervised release
16 would remain the same.

17 THE COURT: Three years, right. Okay. Thank you.

18 PROBATION OFFICER: Correct.

19 THE COURT: The Court finds that the United States
20 Sentencing Guideline range is from 51 months to 63 months.

21 At this time do you know of any reason why I should
22 not proceed to sentence you in this case?

23 MR. BAKHTIARI: Your Honor, I have very few brief
24 points to make to convince the Court that I fall outside the
25 heartland and the purpose of the guidelines, and for that

1 purpose, to consider a sentence outside and beneath the
2 guideline, I have a few points to make very briefly.

3 THE COURT: All right.

4 MR. BAKHTIARI: Your Honor, the premise of this case
5 is that I have been litigious and then went beyond
6 litigiousness and attempted to basically refuge to violence.

7 THE COURT: That's not what this charge is about at
8 all.

9 MR. BAKHTIARI: Well, the obstruction of the justice,
10 Your Honor, using violence, or at least attempting to obstruct
11 justice using violence. Well, the Court has its own finding.

12 THE COURT: That's correct.

13 MR. BAKHTIARI: Yes, Your Honor. And as we said
14 earlier, there's strong policy that the Eighth Circuit has to
15 let the cases that are civil be in their own courts. I invoke
16 that law, Your Honor, if I may.

17 Your Honor, the language of the plea agreement is
18 vague. English is my third language. I was not being
19 antagonistic against the plea language. I was just trying to
20 stick to what the language says. It doesn't come out to call
21 me the author and the sender; so therefore, I kept telling the
22 world, including Post Dispatch and this Court, if this doesn't
23 call me the author and the sender, that I'm not the author and
24 the sender. I have shamefully admitted that I've been a
25 contributor to it.

1 THE COURT: Yes. And you do understand that the
2 indictment charges that there was an official proceeding
3 taking place. That's admitted, obviously, because you've
4 presented all these exhibits.

5 MR. BAKHTIARI: Yes, Your Honor.

6 THE COURT: Secondly, you engaged in conduct which
7 constituted a substantial step towards the commission of the
8 crime of obstruction of an official proceeding. That's
9 admitted. That you did so corruptly, that is, with an
10 improper purpose, and to engage in conduct knowingly and
11 dishonestly with the specific intent to subvert, impede, or
12 obstruct the official proceeding. And four, the natural and
13 probable effect of your conduct would be the interference with
14 the undue administration of justice. You have categorically
15 admitted all of those --

16 MR. BAKHTIARI: And I still do, Your Honor, and I
17 always have.

18 THE COURT: Yes.

19 MR. BAKHTIARI: But the details of how the conducts
20 have been committed vary from being a minor contributor to
21 actually going, finding Mr. Hiles' house, Mr. Hiles' children.
22 None of these were the case, Your Honor.

23 I was investigating my opposing counsels in order to
24 make -- see why are they so hellbent to settle cases that are
25 in conduct discovery.

1 The record shows, Your Honor, I may be litigious, but
2 I've always used the law, legal research, and correspondence
3 to advance my cause even if it is soliciting nuisance
4 settlements, as the Government puts it. Still I went about
5 that using legal research, using correspondence. The record
6 is full of those.

7 The conduct, the detail of the conduct, was not
8 detailed out in the plea language, and I was trying to stick
9 to the language, had Mr. Sauer been more patient with this
10 case to be more specific about my conduct in the plea
11 language, but I have always, and I still do, shamefully I
12 admit my part in that email coming about.

13 Your Honor, this is not what I do. I have received
14 this email -- it's extremely humbling -- from a colleague of
15 mine, Dr. Marcello DiMare. We have produced it to the
16 Government. This says: Al, many people have failed to get
17 anywhere with this, Al. So I -- so, Al, many people have not
18 gone anywhere with this. So I, for one, am impressed. We'll
19 have to discuss the next steps later.

20 I'm a chemist. This is the context of a breast
21 cancer drug. While I was on pretrial release, I was
22 cooperating in Kansas City, and that company was stuck for
23 years. We resolved that issue. Based on that, I have two job
24 offers from San Diego from two different companies. We have
25 submitted that to the Court, Your Honor.

1 THE COURT: You know, there's no question, sir, about
2 your ability, and there's no question about the character of
3 that you display in your work with Mr. Salazar. I mean,
4 you're to be congratulated, and you are hereby congratulated.

5 But the picture I have here is that you engaged in
6 this conduct, I'm absolutely convinced that you did, and now
7 you're trying to deflect away from what I have to decide in
8 terms of imposing a sentence to other issues, which are, quite
9 honestly, just don't make any sense to me.

10 MR. BAKHTIARI: Your Honor, I thought that when I
11 read the list of the factors that were factors into 18 U.S.C.
12 3553, that my character and my employment and my career and my
13 contributions to society count.

14 THE COURT: They do count. No, that's right. I take
15 those into account under 3553(a). Absolutely, they count.
16 But your argument started out a while ago that you fit outside
17 the heartland of 10,000 cases which were used when the
18 sentencing commission set up the guidelines.

19 I haven't heard anything at all that suggests that
20 you fall outside those guidelines outside the heartland of
21 cases. If you want to talk, you know -- now, if you moved on
22 to something else, you want to talk about something else,
23 we'll hear it, but first of all, I have to hear from
24 Mr. Sauer, and then I'll hear from you and you can present
25 your other witnesses if you want to. Do you understand?

1 MR. BAKHTIARI: Yes, Your Honor. I have actually no
2 further witnesses as far as the sentencing factors go. I try
3 to include them here to -- they described their understanding
4 of my character, their understanding of my work ethics.

5 THE COURT: I will hear those after I hear from
6 Mr. Sauer.

7 MR. BAKHTIARI: Yes, Your Honor. And I -- if I may
8 briefly, there are all across the country different districts
9 for a person who has out of aberration obstructed justice
10 under 18 U.S.C. 1512. The courts had punished them with
11 probation from one year to five years. That's been a norm
12 across the country, Your Honor, and I'm not better than those
13 defendants.

14 THE COURT: Okay. I'm going to hear that, but I
15 asked you if you had any reason as to why I shouldn't sentence
16 you, a legal reason, and I've heard none.

17 MR. BAKHTIARI: I deserve a sentence, Your Honor. I
18 am guilty of that count.

19 THE COURT: All right. Then please have a seat. I
20 will hear from Mr. Sauer. Then I will hear your other
21 witnesses. Go ahead.

22 MR. SAUER: Judge, at this time, may I -- would you
23 like to hear my position as to sentencing?

24 THE COURT: Go ahead.

25 MR. SAUER: Very briefly. I have lengthy notes on

1 this. I'll try to make them as short as possible. I just
2 want to address the language of the plea agreement first
3 because it is offensive to me personally that Mr. Bakhtiari
4 stands before you and to this day will not admit, without
5 weaseling around and trying to get mealy mouthed about it,
6 that the allegations he made against Inspector Follmer and the
7 other agents were false. These are allegations of, quote,
8 torture and sexual abuse, his very words.

9 Here is what he said under oath at the plea colloquy:
10 Among other things, the defendant alleged that the federal
11 agents handcuffed him and his wife to furniture while they
12 were both fully nude and engaged in abusive behavior toward
13 them. These allegations were false. The defendant admits
14 that the factual allegations in this motion and accompanying
15 affidavits were false and that he made these allegations for
16 the sole purpose of trying to retaliate against federal
17 officers and corruptly influence the proceedings in his
18 criminal case.

19 To this day, he will not stand up and admit: We lied
20 in those affidavits. He did it when he was under threat of
21 being prosecuted for perjury and obstruction of justice by me,
22 but now that he believes he's gotten out of that because we
23 entered into a plea agreement, he's trying to backtrack on
24 that.

25 The result of that is the pain and psychological

1 anguish that's at the heart of this case and everything
2 continue to hang over these agents to this day. They do not
3 know when a lawsuit may be coming from Mr. Bakhtiari accusing
4 of this. No matter how meritless and frivolous that lawsuit
5 would be, the fact of the -- and the nature of the allegations
6 would be painful to these agents. And it is personally
7 offensive to me when he just stood up here and would not
8 disavow the statements that were made in those affidavits.

9 I feel the same way about the evidence he's tried to
10 put on about the civil lawsuits, because it was part of the
11 plea agreement that he would admit that the civil lawsuits
12 were based on manufactured documents.

13 And here's what he said in the plea agreement: That
14 one of the purposes of sending the threatening email was,
15 quote, to deter Mr. Hiles from potentially discovering
16 evidence that the defendant had forged the documents on which
17 the lawsuit was based. And then we went on to --

18 THE COURT: Slow down a little bit. The court
19 reporter's eyes are popping.

20 MR. SAUER: I apologize. And I have a history with
21 this particular court reporter, Judge.

22 The stipulation of facts in the plea agreement goes
23 on to say: The defendant knew that the, quote, maliciously
24 defamatory letters on which his lawsuits were based were not
25 authored by the defendants, plural, in his civil case and that

1 the factual claims he made in these lawsuits were false.

2 But those are, Judge, largely collateral matters.

3 What is at the heart of this case is the threat to Attorney
4 Brad Hiles and his family and the sort of participation in
5 that threat to Glennon Fogarty.

6 And I would like to focus the Court's attention on a
7 few features of that crime in support of my request, which is
8 request for a sentence within the guideline range of 51
9 months, which I understand to be the bottom end of the
10 guideline range that's been calculated by the Court.

11 First of all, there is the fear, the psychological
12 trauma, the robbery of the peace of mind for Mr. Hiles and his
13 family; that it began on that day, in the morning of the 16th,
14 to this very day. They have been completely robbed of their
15 peace of mind as a result of the defendant's actions.

16 You've heard testimony about that from Mr. Hiles and
17 from Mr. Fogarty. I couldn't say it better than they did. I
18 believe the Court deeply appreciates that.

19 Secondly, I would call to the Court's attention that
20 this was not a rash offense. There's been a two-level
21 enhancement for extensive scope and planning. This was a
22 malicious, premeditated, carefully calculated offense. I set
23 forth 17 discrete actions that the defendant would have had to
24 go through in order to carry out this offense in the
25 sentencing memorandum, and I won't belabor those in detail,

1 but just to remind the Court that this offense required
2 preparation, it required careful research about the individual
3 family life of innocent and honest attorneys, it involved a
4 particularly malicious mind in discovering the wedding
5 pictures and selecting the wedding pictures in particular to
6 be the locus of the threat.

7 It involved extensive attempts to conceal the fact
8 that he was sending it, but also the subtle message, the
9 alarming message with the loaded rifle to Attorney Fogarty
10 that had the dual purpose of, number one, I'm letting you guys
11 know that even though it's an anonymous email, I'm the one
12 that sent the email, and secondly, I can carry out that
13 threat. You need to live in fear in your homes as long as I
14 am at liberty.

15 In addition to that, for the -- on the basis of the
16 language I have just read from the stipulation of the facts in
17 the plea agreement, I would remind the Court that this threat
18 was an active obstruction of justice that was in furtherance
19 of another act of obstruction of justice, which was to prevent
20 the discovery of his falsification of documents in the civil
21 lawsuit that's pending in front of Judge Limbaugh, and that is
22 admitted in the plea agreement.

23 In addition, I would remind the Court that there have
24 been elaborate attempts to evade responsibility for his
25 action, and the Court had just made a finding on that. I

1 don't need to go into the detail. But there have been
2 elaborate attempts by this defendant to evade any
3 responsibilities for his action. I strongly oppose any
4 request for a downward departure, and I respectfully request a
5 sentence of 51 months in this case. Thank you, Your Honor.

6 THE COURT: Now, you have -- you can make your
7 statements or present any other witnesses you want to present
8 in allocution. I will hear them at this time.

9 MR. BAKHTIARI: Well, Your Honor, I request the Court
10 to factor in the testimony of Ms. Sharon Weiss and also Mr.
11 Salazar. They were descriptive as far as my family
12 obligations and my social contributions and my character, Your
13 Honor.

14 This whole suit, this whole criminal suit, is simply
15 an aberration in my life history since I've been living in
16 exile in the United States.

17 May I make a short statement toward the Hiles family
18 and then address the Court?

19 THE COURT: Sure.

20 MR. BAKHTIARI: Mr. Hiles, I have two daughters, one
21 12, one 8. I close my eyes and I imagine the cross hairs on
22 their heads, and my heart stopped. What you went through must
23 have been like a hundred times more because you opened the
24 email. You didn't know who sent it. You were speculating it
25 was me. You didn't know if I was capable of carrying it out,

1 but in your heart you knew I was in the guard back in Iran,
2 and you have to again go convey it to your family.

3 Nobody can minimize that pain. Nobody should try to
4 minimize that pain. But before thinking like a victim, you
5 must think like a jurist. You are a jurist. You're actually
6 an officer of this court. The law of the Eighth Circuit says
7 that the defendant shall not be punished on this for the
8 actions that have been clearly found by the jury or by the
9 Court beyond the preponderance of the evidence.

10 The Court found, and the plea agreement says, that I
11 was a contributor. Specifically for settlement purposes, I
12 accepted that I was a contributor. You must uphold the law.
13 Before thinking like a victim, you must uphold the law that
14 three people were involved in this. You, your son, and your
15 daughter-in-law are all jurists. You must think as jurists
16 and uphold the law and not expect punishment beyond what the
17 Court can find.

18 You know very well the people who have -- who carry
19 weight in our civil suits. Mr. Peterson, the attorney, the
20 general counsels of the college, or Judge Limbaugh, why
21 weren't these people threatened?

22 I was somehow through an unknown route that the
23 Government does not know but it speculates contributed to
24 those, to those emails, as a minor contributor be it. For
25 that I'm here, shamefully, to accept my punishment. Again, I

1 say that nobody can minimize those pains that you went
2 through, and nobody should try to minimize those.

3 Your Honor, as I mentioned, I'm a chemist. One of my
4 colleagues has written this letter about the advancements that
5 we have made in breast cancer drugs. We have produced that to
6 the Government and to the Court. There are companies in
7 California who are waiting for me to go there as a drug maker,
8 as a scientist. It was foolish of me to take those suits too
9 seriously.

10 I recently heard something from my daughter --

11 THE COURT: You know, I guess what's troubling me is,
12 you still think that I believe that I'm going to punish you
13 because you like to file lawsuits, and that does not have
14 anything to do with this case.

15 MR. BAKHTIARI: Your Honor, I am here because I have
16 contributed to a violent act which was purposed to obstruct
17 justice.

18 THE COURT: Right.

19 MR. BAKHTIARI: I have done that. I have brought
20 shame upon myself and my family. My wife has been practically
21 hospitalized because of this stresses of this suit. I am
22 admitting to that.

23 Your Honor, let me list -- I was a civil servant of
24 five years. I lost that status when I was indicted. I
25 accumulated pension for five years. I lost that pension when

1 I was terminated.

2 My firm, it was a small firm, we are not gathering
3 any clientele in the Midwest anymore because of repercussions
4 of this suit. After all this loss, it would, Your Honor, take
5 a special kind of fool not to accept responsibility, not to
6 hear the wake-up call.

7 THE COURT: But I haven't heard one single verb from
8 you that you're accepting responsibility. I expected when you
9 got up here you would turn to Mr. Hiles and say: I'm deeply
10 sorry for all the grief that I have caused you. Instead, you
11 start lecturing him about his responsibility as a jurist to --
12 that's bizarre to me. Just bizarre.

13 MR. BAKHTIARI: My words, Your Honor, because I'm not
14 familiar with this part of the American culture, probably,
15 that saying "I'm sorry," "oops, I'm sorry," "I apologize,"
16 that would be meaningless to him. He knows that I have been a
17 contributor. This Court knows that I have been a contributor.
18 And as a person who is a veteran litigator, he knows the
19 circumstances that so far I have suffered and I will continue
20 suffering.

21 THE COURT: But that's not his fault.

22 MR. BAKHTIARI: I realize that. And I don't know if
23 he's -- if saying the word "I'm sorry" would make him and his
24 family any better. I am here to exhibit that, Your Honor,
25 since March of 2005, we have lost everything, including my

1 status in society, including my career --

2 THE COURT: Whose fault is that?

3 MR. BAKHTIARI: Mine.

4 THE COURT: Whose fault is that?

5 MR. BAKHTIARI: Mine, your Honor. And nobody else.

6 THE COURT: All right.

7 MR. BAKHTIARI: And that is what the plea agreement
8 says. Your Honor, I have, to the best of my ability, gone
9 through the case law here. United States v. Koestner, which
10 is the Eighth Circuit case. Sixth Circuit, Peter Jacquemain.
11 Sixth Circuit, Robert Jacquemain. Eastern District of
12 Michigan in U.S. v. Duane Poucher. Ninth Circuit, Lefler.
13 There is specifically a case, U.S. v. Mack, from New York.

14 These are people who are aberrant -- in aberration
15 have done something as a stupid as I have done to myself and
16 my family. The courts have realized that probation is
17 punishment. And Mack -- specifically United States v. Mack in
18 the District of New York, she was a civil servant. She
19 partook in some violent actions to intimidate others in an
20 ongoing suit. After that she lost her civil status. She lost
21 her pension. She lost her career completely. The court
22 punished her by five years of probation.

23 I am not better than her. I'm not better than either
24 one of those people. The United States has a norm for this
25 kind of offense in these circumstances. The last line, Your

1 Honor, the Court has not been hearing it maybe because I have
2 planned these to speak before the Court.

3 I have shamefully brought that shame upon myself and
4 my family to commit that crime. I contributed to something
5 violent, and I knew it was going to have hindrances in front
6 of that civil suit. I am shameful, and I'm here before the
7 Court to ask for mercy. I respectfully ask for mercy.

8 I have not been -- I have not been antagonistic and
9 arrogant against the Government by recanting my statements. I
10 was trying to stick to the language, and in my perspective, as
11 a person who English is my third language, in my understanding
12 I was being obedient to what it says. It's calling me a
13 contributor. So I called the paper. I said, "Look, this says
14 I'm a contributor."

15 Your Honor, Mr. Sauer is not addressing this very
16 reality that when I had a dispute with the paper, I didn't
17 find his family members' pictures to email it to him. I
18 didn't go find his house. I didn't show a rifle to him as
19 they allege. I found his attorney. I read Missouri law on
20 libel, and as the record shows, I wrote to that attorney. I
21 didn't demand a settlement. I didn't demand a courthouse
22 steps settlement. I said, this is obstructing my career.
23 It's not exactly reflecting the plea language. Please remove
24 it.

25 My contribution to the horrible action was an

1 aberration. I'm here to respectfully ask for mercy, Your
2 Honor. Thank you.

3 THE COURT: All right. I have considered the impact
4 of the parties' plea agreement on sentencing issues and all of
5 the record that was made in regard to the acceptance of that
6 guilty plea. I've heard evidence today. I have considered
7 statements of the Assistant United States Attorney and the
8 defendant in this case. There are no departures made under
9 the United States Sentencing Guidelines. I now have to decide
10 if I will make a sentence under the guidelines or if I will
11 make a sentence outside of the guidelines.

12 I must look at all the factors in 18, United States
13 Code, 3553(a) to decide whether to impose a guideline sentence
14 or a nonguideline sentence. Those factors include, first, the
15 nature and circumstances of the offense and the history and
16 characteristics of the defendant.

17 I have received a number of letters filed on behalf
18 of the defendant. I have read them all. The one from his
19 wife is particularly -- I use the word "troubling" not to
20 suggest anything bad about it. It's troubling because it does
21 contain so many facts about how she and her family have been
22 impacted by the defendant's conduct, and for that many -- or
23 including me, are remorseful.

24 I have heard evidence and many statements of the
25 defendant. It's my belief that, as I said before, I allowed

1 his attorney to remain in the courtroom for advice. He would
2 be much better off with counsel. He has made so many
3 statements in this case today which are just patently
4 unbelievable to me; that I believe he has not been truthful
5 with the Court. I believe that he has a misconception of --
6 strike that. I believe he totally disregards the implications
7 of his plea. I think that he has some kind of grandiose
8 belief that because of his ability and skills, that he is
9 above the law and that what he did was insignificant, which is
10 not what I believe based upon the evidence I've heard and the
11 statement of the law.

12 The statement must afford adequate -- it must reflect
13 the seriousness of the offense and must promote respect for
14 the law, and it must provide just punishment for the offense.
15 Any sentence outside the guideline range, in my view, would
16 not accomplish those purposes.

17 It must afford adequate deterrence to criminal
18 conduct. That is sort of a neutral factor, I think, in this
19 case. It must protect the public from further crimes of the
20 defendant. The defendant has demonstrated that he has violent
21 proclivities, and some substantial punishment is required to
22 satisfy that element.

23 He has a master's degree. He does not need
24 educational or vocational training. He does not need medical
25 care or other correctional treatment.

1 I have looked at all the factors under 18, United
2 States Code, and I want to finish by talking about the man
3 that appears before me today. And he is a man of contrast.
4 He has a daughter who is 9 years old born naturally to him by
5 his first marriage. By all indications he does pay, on a
6 regular basis, child support of \$457 a month for the support
7 of that child.

8 He is currently married to Ms. Weiss. That marriage
9 is intact. By all accounts it is a very supportive marriage
10 and he is in all respects a very good husband to Ms. Weiss.

11 He is an electrical engineer -- his father -- strike
12 that. His father is an electrical engineer. His mother is a
13 homemaker in Iran. They have an intact marriage. His father
14 was a functional alcoholic. He's one of five children. He
15 describes his childhood as normal.

16 He suffered a gunshot wound. To his credit, he took
17 a stand against a suicide bombing in the state of Iran -- or
18 in the state of Israel. For that he suffered a good deal. He
19 converted to Christianity, was jailed for that. And Islamic
20 leaders punished him severely for his religious conversion.

21 He has no drug issues at all. He has no alcohol
22 issues at all. The only criminal record he has was driving
23 without proper driver's license for which he received no
24 points.

25 He has the lowest criminal history category of 1. He

1 is, by all accounts, the sole provider for his wife and her
2 and the children. He worked at Yantra Group where he earned
3 \$10,000 a month. He worked for the City of St. Louis where he
4 earned \$3,217 a month. He worked for Chemir, C-H-E-M-I-R,
5 Laboratories where he earned \$3,750 a month. He worked for
6 Analytical Chemists, where he earned \$45,000 a month (sic).
7 He's a very talented individual with enormous skills and
8 abilities. All those things the Court finds in fashioning a
9 judgment.

10 Under the Sentencing Reform Act of 1984 and the
11 provisions of 18, United States Code, 3553(a), it is the
12 judgment of the Court that the defendant, Alireza Bakhtiari,
13 also known as Al Bakt, B-A-K-T, is committed to the custody of
14 the Bureau of Prisons to be imprisoned for a term of 51
15 months.

16 Upon release from imprisonment, he shall be placed on
17 supervised release for a term of three years. If not
18 deported, within 72 hours of release from the custody of the
19 Bureau of Prisons he shall report in person to the probation
20 office in the district to which he is released.

21 While on supervision he shall comply with the
22 standard conditions that have been adopted by this Court and
23 shall comply with the following additional conditions: If it
24 is determined there are costs associated with any services
25 provided, he shall pay those costs based on a co-payment fee

1 established by the probation office. He shall participate in
2 a mental health evaluation and shall follow any
3 recommendations of such and shall participate in the mental
4 health program approved by the probation office.

5 He shall participate in the cognitive behavioral
6 treatment program as directed by the probation office.

7 He shall submit his person, residence, office, or
8 vehicle to any search conducted by the probation office based
9 upon a reasonable suspicion of contraband or evidence of a
10 violation of a condition of release. He shall warn any other
11 residents that the premises may be subject to searches under
12 this condition.

13 He shall participate in all deportation proceedings
14 and remain outside the United States if deported. In that
15 regard I would like to put a statement in the sentencing and
16 judgment that the Department of Immigration and Customs
17 Enforcement must carefully consider the very substantial risks
18 of the defendant if he is deported to Iran or any Islamic
19 country.

20 Based on the low risk he poses for future substance
21 abuse, the Court suspends mandatory drug testing.

22 He has -- he does have an ability to pay a fine. He
23 has a net worth of \$50,709. I am finding in this case,
24 however, based upon the severe consequences of the sentence
25 and judgment upon his family, that any imposition of a fine

1 would be a direct retribution against his family, and I'm not
2 going to impose a fine in this case.

3 I am ordering him to pay a \$100 special assessment
4 which is due and payable immediately.

5 Any notice of appeal that you have a right to file
6 must be filed within 14 days of this date. If you're unable
7 to pay the cost of an appeal, you may apply for leave to
8 appeal in forma pauperis, and the clerk of the court shall
9 assist you with those filings.

10 There is an issue of release in this case. I will
11 hear first from Mr. Sauer.

12 MR. SAUER: Judge, I respectfully request, and
13 vigorously request, that the Court order remand at this time.
14 The defendant has been on notice that I would not agree to
15 voluntary surrender; so he's had -- he can't claim that he's
16 been surprised at the possibility of remand.

17 In order for him to surrender voluntarily, the Court
18 would have to make a finding that there is clear and
19 convincing evidence that he is not a threat to the community
20 and not a flight risk. Evidence of both of those points is
21 wholly absent in this case. The nature of the crime is a
22 threat of violence. His situation is now quite different than
23 it was when he first walked in here when he believed he might
24 be able to convince the Court to grant him probation. Now he
25 knows he's looking at a significant term of imprisonment.

1 I believe that I speak for Mr. Hiles and his family
2 and Mr. Fogarty and his family when I say that they would fear
3 what he might do in the time between now, knowing that he has
4 to go to prison, and surrendering himself.

5 So given the nature of the crime, I don't think there
6 is any basis for a finding that he's not a threat to the
7 community.

8 In addition, I believe he's a flight risk. I'm aware
9 of at least two representations he has made while he's been on
10 bond that he intends to travel abroad, to leave the country.
11 He made one to his ex-wife, Terry Bakhtiari, in an email of
12 May 4 of 2012.

13 In addition to that, not long ago, about a month or
14 six weeks ago, I received a phone call from the city of Ladue
15 prosecutor who notified me that he was in St. Louis County
16 Court present with Mr. Bakhtiari where they were trying to set
17 a trial date for his currently pending -- currently pending
18 harassment lawsuit. That's reflected in the PSR. And in
19 trying to set a trial date for that, Mr. Bakhtiari represented
20 to counsel and to a St. Louis County judge that he wouldn't be
21 available because he had intentions to travel outside the
22 country.

23 So under all the facts and circumstances, I would say
24 that, number one, he is a threat to the community. Number
25 two, he is a flight risk. And therefore, I request remand at

1 this time.

2 THE COURT: All right. Just a moment. I will hear
3 you now, Mr. Bakhtiari.

4 MR. BAKHTIARI: Yes, Your Honor. Your Honor, if I
5 may, I move that the statements of all the witnesses and the
6 exhibits be admitted on the record at this time, all of them.

7 And the Court is in possession of an expired passport
8 that I had. I don't have any passport at this time from any
9 country. I have been, for business, going to San Diego, and
10 it's been right across the border from Mexico, and I have
11 always come back and I've been in constant contact with my
12 probation officers.

13 In order to clear up our residence in Kansas City and
14 clear up our residence in San Diego and establish a proper
15 residence for my ill wife here in St. Louis, I would need some
16 time to prepare those before I surrender myself to the Bureau
17 of Prisons.

18 And based on her doctor's advice, we'll have to
19 choose a place, a camp, that is proper for her and me. And
20 for those considerations, Your Honor, I will request that you
21 allow me to surrender myself voluntarily.

22 I believe the law allows me or the regulation allows
23 me 30 days. If I may have that 30 day to make these
24 preparations for the family.

25 THE COURT: Okay. Based upon what law do you

1 reference? I'm not familiar with that law.

2 MR. BAKHTIARI: May I consult with Ms. --

3 THE COURT: Sure.

4 **(OFF THE RECORD.)**

5 MR. BAKHTIARI: My apologies, Your Honor. I
6 misspoke; that there is no law. And the standard of practice
7 typically what the courts have granted defendants previously
8 was about 30 days to surrender myself. If I may ask the Court
9 to find that based on these two standards, that being the
10 flight risk and a threat to the alleged victims here or the
11 victims, I am wearing a bracelet on my ankle, and as I've
12 mentioned, I have no means to on board any international
13 flights. They would not even allow me.

14 On these bases I allow the courts to show leniency to
15 my family so I can prepare for them their residence prior to
16 submitting myself to the Bureau of Prisons, Your Honor.

17 THE COURT: Do you have a recommendation when you're
18 notified by the Bureau of Prisons or when you are ordered --
19 when the Bureau of Prisons designates you, do you have a
20 preference as to where in the United States, either a specific
21 prison or a location where you would like to serve the
22 sentence?

23 MR. BAKHTIARI: Yes, Your Honor. We have been moving
24 our furniture to California, and that is where the doctors are
25 that serve my wife. Anywhere within the state of California,

1 any of those prison camps, or camps.

2 THE COURT: What would be the camp or what would be
3 the location where you will be living? Because I will make a
4 recommendation that you receive a camp placement at as nearly
5 possibly located by a city. What --

6 MR. BAKHTIARI: The city is Thousand Oaks,
7 California, Your Honor.

8 THE COURT: How do you spell that?

9 MR. BAKHTIARI: T-H-O-U-S-A-N-D Oaks.

10 THE COURT: Okay.

11 MR. BAKHTIARI: California.

12 THE COURT: All right. The Court is recommending
13 that placement be at that location, at a camp as close as
14 possible to that location in that city in California.

15 You may have a seat.

16 MR. BAKHTIARI: Yes, Your Honor.

17 THE COURT: The Court is constrained by the law, and
18 it requires that I make specific findings that there is no --
19 and I have to find by clear and convincing evidence that the
20 defendant will not pose a threat to any other person or pose a
21 risk of flight, and I can't make those findings.

22 And today the defendant faced Mr. Hiles and lectured
23 to him. There's no indication at all of any remorse to Mr.
24 Hiles. And based upon the fact that he may believe that Mr.
25 Hiles has some role in him being imprisoned, there is -- I

1 cannot make a finding there is no likelihood of threat, no
2 likelihood of danger to any other person in the community.

3 Additionally, if allowed to live right across the
4 border from California, it's easy to walk across that border.
5 I've been there. I understand it.

6 I cannot conclude, based upon his behavior in court,
7 his statements about what he believed -- believes the offense
8 charged, how that isn't really as severe as he -- that is more
9 severe than he really believes it is, all of those things I
10 cannot find, by clear and convincing evidence, that he will
11 not flee or pose a danger to any other person. So I must deny
12 the request for self-surrender and accordingly do so.

13 Are there any other matters?

14 MR. SAUER: No, Your Honor.

15 THE COURT: All right. Could I see Ms. Smith for
16 just a moment, please?

17 **(AN OFF-THE-RECORD DISCUSSION WAS HELD.)**

18 MR. SALAZAR: Your Honor, present in court I would
19 like to approach the bench, if possible, from the podium.

20 THE COURT: Sure, come on up. This is, for the
21 record, Mr. Salazar. Go ahead, sir.

22 MR. SALAZAR: Yes, sir. The reason I've asked to
23 come up here is, in the time that I've known Mr. Bakhtiari,
24 and even prior to even meeting him, I have studied the Islam,
25 the Nation of Islam, Islamic Law, Sharia law, and number of

1 different areas of the Quran.

2 In that, in hearing the testimony today about lack of
3 remorse and the things that even has been impressed upon you,
4 and really the lack of Mr. Bakhtiari of coming out and saying
5 about, "I'm sorry, I have done these acts, I've done these
6 things," would be actually against everything he's been raised
7 in in his culture. There is no mention of that. And if
8 anybody is a student of the Quran, you'll find that it -- in
9 that contrary to what they believe and what we believe is that
10 there's no places in there for their so-called "golden rule."
11 There is no place in there as far as love myself, you know,
12 love God, love one another.

13 And in that same regard, there is no real area within
14 the culture in the Sunni religion or the Shiite religion under
15 Sharia to go forth and to say things such as, you know, "I'm
16 sorry." That talking about the third language that he has
17 referred to a number of times that I was sitting back there
18 listening to, in regards to what he would read in the legal
19 documents and that he has gone ahead and made his contentions,
20 this is how I understand it. This is how, you know, what it
21 means to me. It's going to be contrary to the way you would
22 read it or I would read it or anybody else would. This would
23 not come across with him the same way.

24 What he was doing today is making a defense for
25 himself that through his culture, his beliefs exactly the way

1 it would be, say, elsewhere, such as Iran. But coming that it
2 is here, and even though I know he's educated, I know he
3 speaks well, I know he travels, and I know he's done a number
4 of things, I know he's a chemist, and I do know this: That he
5 would not come here and go ahead and do the things he did as a
6 contrivance or as a device or a means, irregardless of what is
7 believed, you know, even by the prosecution. I respect their
8 position, I respect the Court, but I also know from fact and
9 from being around, that when he talks about that third
10 language and things he's doing here and the way he presented
11 it to the Court, truly erroneous.

12 And I have to agree with the Court. The best thing
13 he could have done was have an attorney. I agree with that,
14 but please, Your Honor, I ask again, and for the family
15 especially, that he be given the chance to self-surrender. I
16 do not believe he's going to be a flight risk. He is not
17 going to walk across that border. He's had ample opportunity
18 to do so before even coming here today knowing that there was
19 a chance of having a substantial sentence pronounced against
20 him.

21 I just beg the Court to reconsider what you've
22 already said as far as the self-surrender, Your Honor. I
23 thank for your time and your patience.

24 THE COURT: All right. Well, I appreciate several
25 things. I appreciate -- and I'm not pandering to you, I

1 promise you that. I respect the faith that you practice, and
2 I do take to heart everything you said on the witness stand.
3 I was very impressed with your testimony and also with your
4 statement.

5 Here is the conundrum that I face. Congress has
6 passed laws about whether a person is allowed to
7 self-surrender. And if there are cases where there are
8 elements of violence associated with the offense, that of
9 itself suggests that the person would not be a suitable
10 candidate for self-surrender.

11 But in this case his actions, which are undenied, of
12 having a lawyer go into a room after there was evidence of
13 pictures with cross hairs on two foreheads and then produce a
14 rifle, eject a live cartridge and say, "Here, do you want a
15 bullet?" all of those things suggest to me that there is a
16 proclivity for violence.

17 And so in order to let him go, unlike in state
18 court -- and I used to do that for about 17 years -- I had
19 total discretion of whether or not I would let someone go or
20 not, and you could always take into account the effect on the
21 family and all of those other things.

22 Here the cases are very specific. You can't consider
23 those issues. You have to consider, can a judge make a
24 conclusion, by clear and convincing evidence, that the person
25 is not likely to flee or pose a danger to any person in the

1 community? And based upon what I have seen, and taking into
2 account your statements as well, I can't find, by clear and
3 convincing evidence, that he will not pose a threat or a
4 danger. These people are living in terror, and I just can't
5 come to that conclusion.

6 I respectfully thank you for your statement, but I
7 must, as my own, follow the law, which I'm trying hard to do.
8 Thank you, sir.

9 MR. SALAZAR: Yes, Your Honor. Thank you.

10 MR. BAKHTIARI: Your Honor --

11 THE COURT: All right.

12 MR. BAKHTIARI: Thank you again for your patience.
13 May I ask the Court to reappoint Ms. Smith so she can address
14 the appellate matters after my surrender, Your Honor?

15 THE COURT: Well, I will do this. I will instruct
16 Ms. Smith to file a notice of appeal for you, and the Eighth
17 Circuit Court of Appeals will be deciding the identity of your
18 counsel. I have to take into account what she indicates
19 that -- in allowing her to withdraw. So I can't very well
20 say, okay, I'm going to disregard all of those things and now
21 have her represent you on appeal.

22 I don't -- I'm not convinced that your views and her
23 views are the same about your appeal, but I will instruct her
24 to file a notice of appeal so you're protected in that regard.
25 What happens after that is up to the Court of Appeals.

1 MR. BAKHTIARI: It was actually her own idea, and she
2 reoffered her services, and I graciously accepted. She's been
3 a great counsel, and I'm grateful to her. We did not have
4 enough time to prepare for today to communicate the factual
5 background. That's why I decided to take over.

6 And I apologize if my language has come across
7 arrogant. It's just a complete different culture that I grew
8 up. Thank you, Your Honor.

9 THE COURT: Well, I want to make the record clear. I
10 don't want you to lay a trap for me.

11 MR. BAKHTIARI: No, Your Honor.

12 THE COURT: If you had requested more time, you would
13 have gotten it --

14 MR. BAKHTIARI: Yes, Your Honor.

15 THE COURT: -- to do whatever you needed to do. So I
16 don't want the record to show that you somehow were denied due
17 process because you didn't have enough time to prepare your
18 case. That's just nonsense.

19 MR. BAKHTIARI: That is correct, Your Honor. We did
20 not ask for extension. That was our fault, thank you.

21 THE COURT: All right. Court's in recess.

22 **(PROCEEDINGS CONCLUDED AT 1:20 PM.)**

23

24

25

CERTIFICATE

I, Shannon L. White, Registered Merit Reporter and Certified Realtime Reporter, hereby certify that I am a duly appointed Official Court Reporter of the United States District Court for the Eastern District of Missouri.

I further certify that the foregoing is a true and accurate transcript of the proceedings held in the above-entitled case and that said transcript is a true and correct transcription of my stenographic notes.

I further certify that this transcript contains pages 1 through 162 inclusive and that this reporter takes no responsibility for missing or damaged pages of this transcript when same transcript is copied by any party other than this reporter.

Dated at St. Louis, Missouri, this 10th day of December, 2012.

/s/Shannon L. White
Shannon L. White, RMR, CRR, CCR, CSR
Official Court Reporter